

Exhibit 7

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 No. 10 Civ. 9308(JSR)

5 -----x

6 BURTON T. FRIED,

7 Plaintiff,

8 - against -

9 LVI SERVICES, INC., LVI PARENT CORP., CODE
10 HENNESSY SIMMONS, LLC d/b/a CHS PRIVATE
11 EQUITY V LP; APOLLO INVESTMENT CORP.,
12 SCOTT E. STATE, in his official and
13 individual capacities; BRIAN SIMMONS, in
14 his official and individual capacities;
15 RAJAY BAGARIA, in his official and
16 individual capacities; GERALD J. GIRARDI,
17 in his official and individual capacities,
18 Defendants.

19 -----x

20 June 3, 2011

21 9:10 a.m.
22
23
24
25

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212-267-6868

516-608-2400

<p>1 2 3 4 VIDEOTAPE DEPOSITION of JOHN 5 LEONARD, taken by the Plaintiff, pursuant 6 to Notice, held at the offices of Thompson 7 Wigdor & Gilly, LLP, 85 Fifth Avenue, New 8 York, New York, before Debbie Zaromatidis, 9 a Shorthand Reporter and Notary Public of 10 the State of New York. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>2 4 1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND 5 AGREED by and between the Attorneys for 6 the respective parties hereto that filing 7 and sealing be and the same are hereby 8 waived. 9 IT IS FURTHER STIPULATED AND 10 AGREED that all objections except as to 11 the form of the question, shall be 12 reserved to the time of the trial. 13 IT IS FURTHER STIPULATED AND 14 AGREED that the within examination may be 15 signed and sworn to before any notary 16 public with the same force and effect as 17 though signed and sworn to before this 18 Court. 19 20 21 22 23 24 25</p>
<p>3 1 2 APPEARANCES: 3 4 THOMPSON WIGDOR & GILLY, LLP 5 Attorneys for Plaintiff 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: SHAFFIN A. DATOO, ESQ. 9 10 11 SIDLEY AUSTIN, LLP 12 Attorneys for Defendants 13 787 Seventh Avenue 14 New York, New York 10019 15 BY: JOANNE SELTZER, ESQ. 16 17 18 ALSO PRESENT: 19 BURTON FRIED 20 J.D. MARTINEZ, Videographer 21 22 23 24 25</p>	<p>5 1 2 09:10:42 3 THE VIDEOGRAPHER: Good 09:10:42 4 morning. My name is J.D. Martinez of 09:10:42 5 Veritext New York. The date today is June 09:10:42 6 3, 2011, and the time on the video is 9:10 09:10:42 7 01 a.m. Today's deposition is being held 09:10:42 8 at the office of Thompson Wigdor & Gilly, 09:10:42 9 LLP located at 85 Fifth Avenue, New York, 09:10:42 10 New York. The caption of the case is 09:10:42 11 Burton T. Fried versus LVI Services, Inc. 09:10:42 12 et al., filed in the United States 09:10:42 13 District Court, Southern District of New 09:10:42 14 York. The name of the witness is John 09:10:42 15 Leonard. 09:10:42 16 At this time the attorneys will 09:10:42 17 identify themselves and the parties they 09:10:42 18 represent after which our court reporter, 09:10:42 19 Debbie Zaromatidis, will swear in the 09:10:42 20 witness, and we can proceed. 09:10:42 21 MS. SELTZER: Joanne Seltzer 09:10:42 22 Sidley Austin for all defendants. 09:10:42 23 MR. DATOO: Shaffin Datoo 09:10:42 24 Thompson Wigdor & Gilly for the plaintiff 25 Burt Fried.</p>

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<p>6</p> <p>1 LEONARD</p> <p>2 JOHN LEONARD,</p> <p>3 having first been duly sworn by a Notary</p> <p>4 Public of the State of New York, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION BY MR. DATOO: 09:10:42</p> <p>7 Q. Good morning, Mr. Leonard. 09:10:42</p> <p>8 A. Good morning. 09:10:42</p> <p>9 Q. As you know, my name is Shaffin 09:10:42</p> <p>10 Dattoo, and I represent Mr. Fried in this 09:10:42</p> <p>11 lawsuit. I am just going to ask you a 09:10:42</p> <p>12 whole bunch of questions today, and 09:10:42</p> <p>13 hopefully you can answer all of them 09:10:42</p> <p>14 unless your attorney directs you not to 09:10:42</p> <p>15 answer. I am just going to start off with 09:10:42</p> <p>16 a couple of ground rules. 09:10:42</p> <p>17 Do you understand that the 09:10:42</p> <p>18 answers you are about to give are under 09:10:42</p> <p>19 oath and that you are subject to the 09:10:42</p> <p>20 penalties of perjury if you give an 09:10:42</p> <p>21 untruthful answer? 09:10:42</p> <p>22 A. Yes. 09:10:42</p> <p>23 Q. I am going to assume that if you 09:10:42</p> <p>24 answer a question that you understood it. 09:10:42</p> <p>25 If you don't understand a question, let me 09:10:42</p>	<p>8</p> <p>1 LEONARD</p> <p>2 from a phone call I had between myself and 09:10:42</p> <p>3 Burt. 09:10:42</p> <p>4 Q. And did you provide those notes 09:10:42</p> <p>5 to your attorney? 09:10:42</p> <p>6 A. I did not. 09:10:42</p> <p>7 Q. Okay. 09:10:42</p> <p>8 MS. SELTZER: You'll get them 09:10:42</p> <p>9 when I get them. 09:10:42</p> <p>10 Q. Okay. Do you intend to provide 09:10:42</p> <p>11 that to your attorney? 09:10:42</p> <p>12 A. Yes. 09:10:42</p> <p>13 MR. DATOO: Okay. Joanne, I 09:10:42</p> <p>14 request production of those notes. 09:10:42</p> <p>15 Q. Do you recall when you had that 09:10:42</p> <p>16 conversation with Mr. Fried that you took 09:10:42</p> <p>17 notes on? 09:10:42</p> <p>18 A. I believe it was in early 09:10:42</p> <p>19 January of 2011. 09:10:42</p> <p>20 Q. Okay. And do you know what you 09:10:42</p> <p>21 discussed with Mr. Fried? 09:10:42</p> <p>22 A. We discussed initially my injury 09:10:42</p> <p>23 that I had had from an accident and then 09:10:42</p> <p>24 his disappointment in me and supposedly 09:10:42</p> <p>25 how I had changed regarding my actions 09:10:42</p>
<p>7</p> <p>1 LEONARD</p> <p>2 know, and I will ask the question in a 09:10:42</p> <p>3 different way. Please give verbal answers 09:10:42</p> <p>4 to my questions. Don't nod your head or 09:10:42</p> <p>5 shake it; otherwise, the court reporter 09:10:42</p> <p>6 won't be able to take it down, and also 09:10:42</p> <p>7 please let me finish asking a question 09:10:42</p> <p>8 before you answer it; otherwise, the court 09:10:42</p> <p>9 reporter will not be able to take that 09:10:42</p> <p>10 down. If you need a break, let me know. 09:10:42</p> <p>11 The only condition I have is that you 09:10:42</p> <p>12 answer the last question asked. 09:10:42</p> <p>13 Is your ability to tell the 09:10:42</p> <p>14 truth in any way impaired today? 09:10:42</p> <p>15 A. No. 09:10:42</p> <p>16 Q. Okay. Now, in connection with 09:10:42</p> <p>17 this lawsuit, did you provide your 09:10:42</p> <p>18 attorney with all responsive documents? 09:10:42</p> <p>19 A. I did not provide documents. 09:10:42</p> <p>20 Q. Okay. Do you have any documents 09:10:42</p> <p>21 that have anything to do with this 09:10:42</p> <p>22 lawsuit? 09:10:42</p> <p>23 A. I have one document. 09:10:42</p> <p>24 Q. And which document is that? 09:10:42</p> <p>25 A. It is some notes I took down 09:10:42</p>	<p>9</p> <p>1 LEONARD</p> <p>2 with the company. 09:10:42</p> <p>3 Q. Okay. Why did you take notes 09:10:42</p> <p>4 about that conversation? 09:10:42</p> <p>5 A. One, because there had been a 09:10:42</p> <p>6 lawsuit filed against LVI prior to that 09:10:42</p> <p>7 and, two, just to make sure I had it clear 09:10:42</p> <p>8 in my head what was discussed in case I 09:10:42</p> <p>9 was asked about it. 09:10:42</p> <p>10 Q. Okay. Is it your practice to 09:10:42</p> <p>11 take notes of conversations you have over 09:10:42</p> <p>12 the phone? 09:10:42</p> <p>13 A. Not usually. 09:10:42</p> <p>14 Q. Okay. What -- what did you say 09:10:42</p> <p>15 on this phone call? 09:10:42</p> <p>16 A. Not too much. I listened. 09:10:42</p> <p>17 Basically Burt said he no longer wanted to 09:10:42</p> <p>18 have anything to do with me or wanted me 09:10:42</p> <p>19 to have nothing to do with his family and 09:10:42</p> <p>20 that he was upset with my actions and the 09:10:42</p> <p>21 way I had dealt with the situation of the 09:10:49</p> <p>22 reduction of forces that we had and 09:10:49</p> <p>23 basically said I turned into a mouse. 09:10:49</p> <p>24 Q. How long was this conversation? 09:10:49</p> <p>25 A. I would say ten minutes. 09:10:49</p>

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<p style="text-align: right;">34</p> <p>1 LEONARD</p> <p>2 Q. Okay. Did Mr. Fried at 09:29:21</p> <p>3 this -- at this point in time did Mr. 09:29:24</p> <p>4 Fried ever tell that he wanted to retire 09:29:26</p> <p>5 or use words to that effect? 09:29:28</p> <p>6 A. He had said he, you know, wanted 09:29:29</p> <p>7 to go to the beach many times through our 09:29:33</p> <p>8 career, but I don't know in 2006 if he 09:29:38</p> <p>9 said that. 09:29:41</p> <p>10 Q. Okay. When -- when did he say 09:29:45</p> <p>11 that to you? 09:29:45</p> <p>12 A. Over different periods of our 09:29:46</p> <p>13 relationship through our career, so I 09:29:50</p> <p>14 can't give you an exact time. 09:29:52</p> <p>15 Q. And what did you understand that 09:29:55</p> <p>16 to mean? 09:29:56</p> <p>17 A. That at some point he would like 09:29:56</p> <p>18 to retire and sit on the beach. 09:29:58</p> <p>19 Q. Did he tell you when that was? 09:30:01</p> <p>20 A. No. 09:30:03</p> <p>21 Q. Do you know who Robert McNamara 09:30:04</p> <p>22 is? 09:30:20</p> <p>23 A. Yes. 09:30:20</p> <p>24 Q. Who is he? 09:30:20</p> <p>25 A. He is the former CEO of LVI 09:30:23</p>	<p style="text-align: right;">36</p> <p>1 LEONARD</p> <p>2 mentioned that Mr. Fried did some work in 09:31:48</p> <p>3 sales. Does that include securing and 09:31:55</p> <p>4 attempting to secure contracts for LVI 09:31:57</p> <p>5 Services? 09:32:00</p> <p>6 A. From time to time. 09:32:00</p> <p>7 Q. Okay. And what else did you 09:32:02</p> <p>8 mean by sales? 09:32:07</p> <p>9 A. There were periods of time where 09:32:12</p> <p>10 he oversaw some of the national 09:32:14</p> <p>11 salespeople. 09:32:16</p> <p>12 Q. And was he working less than 09:32:23</p> <p>13 five days a week when he was chairman? 09:32:25</p> <p>14 MS. SELTZER: Objection. Under 09:32:27</p> <p>15 McNamara? 09:32:28</p> <p>16 MR. DATOO: Under McNamara. 09:32:30</p> <p>17 A. Not in general. 09:32:33</p> <p>18 Q. What do you mean by that? 09:32:34</p> <p>19 A. I mean I don't know if he worked 09:32:35</p> <p>20 five days a week every week when he worked 09:32:37</p> <p>21 for Bob, but in general he worked a full 09:32:39</p> <p>22 work week if that is your question. 09:32:41</p> <p>23 Q. Okay. That is. Thank you. 09:32:43</p> <p>24 And did Mr. Fried in his role as 09:32:45</p> <p>25 chairman under McNamara step away from the 09:32:48</p>
<p style="text-align: right;">35</p> <p>1 LEONARD</p> <p>2 Services, Inc. 09:30:26</p> <p>3 Q. And was he -- was he hired to 09:30:26</p> <p>4 replace Mr. Fried as CEO? 09:30:28</p> <p>5 A. Yes. 09:30:30</p> <p>6 Q. And while Mr. McNamara was CEO, 09:30:34</p> <p>7 what was Mr. Fried's job title? 09:30:36</p> <p>8 A. Chairman. 09:30:38</p> <p>9 Q. Do you know -- while Mr. 09:30:39</p> <p>10 McNamara was CEO, do you know what Mr. 09:30:48</p> <p>11 Fried's job duties were as chairman? 09:30:52</p> <p>12 A. No. 09:30:54</p> <p>13 Q. Do you know what he did as 09:30:54</p> <p>14 chairman? 09:30:55</p> <p>15 MS. SELTZER: Objection. Asked 09:30:56</p> <p>16 and answered. You can answer it again. 09:30:57</p> <p>17 A. Yes. He did legal work. He did 09:30:58</p> <p>18 some oversight of sales at different 09:31:06</p> <p>19 times. He did review of contracts of 09:31:10</p> <p>20 bonds, oversaw some of the marketing 09:31:15</p> <p>21 efforts coming out of Westport, the office 09:31:22</p> <p>22 he worked at, travel, general guidance of 09:31:25</p> <p>23 any issues contractually that I would have 09:31:37</p> <p>24 or Bob would have. 09:31:44</p> <p>25 Q. Okay. Now, when you say -- you 09:31:45</p>	<p style="text-align: right;">37</p> <p>1 LEONARD</p> <p>2 day-to-day responsibilities? 09:32:51</p> <p>3 A. Yes. 09:32:59</p> <p>4 Q. And now while Mr. McNamara was 09:32:59</p> <p>5 CEO, do you have any personal knowledge of 09:33:02</p> <p>6 Mr. Fried's work performance as chairman? 09:33:04</p> <p>7 A. Do I have any -- repeat the 09:33:07</p> <p>8 question, please. 09:33:14</p> <p>9 Q. How -- how was Burt -- was Burt 09:33:15</p> <p>10 doing a good job as chairman under Mr. 09:33:19</p> <p>11 McNamara? 09:33:21</p> <p>12 A. Yes. 09:33:22</p> <p>13 Q. Now, while Mr. McNamara was CEO, 09:33:23</p> <p>14 did Mr. Fried ever tell you that he wanted 09:33:29</p> <p>15 to retire or use words to that effect? 09:33:31</p> <p>16 A. I don't believe so. 09:33:34</p> <p>17 Q. Now, did there come a time when 09:33:44</p> <p>18 Mr. Fried became the interim CEO of LVI 09:33:47</p> <p>19 Services? 09:33:51</p> <p>20 A. Yes. 09:33:51</p> <p>21 Q. Do you recall when that was? 09:33:53</p> <p>22 A. Approximately April of 2010. 09:33:55</p> <p>23 Q. Do you know why? 09:34:00</p> <p>24 A. Mr. McNamara had resigned the 09:34:04</p> <p>25 position. 09:34:08</p>

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<p>1 LEONARD</p> <p>2 Q. Okay. And do you know if Mr. 09:34:10</p> <p>3 Freed volunteered to become interim CEO or 09:34:11</p> <p>4 If he was asked to become interim CEO? 09:34:17</p> <p>5 A. I don't know. 09:34:20</p> <p>6 Q. Okay. And what job duties did 09:34:26</p> <p>7 Mr. Fried assume as interim CEO? 09:34:28</p> <p>8 A. Oversight of the company. 09:34:31</p> <p>9 Q. Okay. And do you know if he 09:34:34</p> <p>10 continued to perform or if he continued to 09:34:36</p> <p>11 do what he did as chairman while he was 09:34:39</p> <p>12 interim CEO? 09:34:41</p> <p>13 A. Yes. 09:34:43</p> <p>14 Q. Okay. Now, while Mr. Fried was 09:34:44</p> <p>15 interim CEO, what was he working on? 09:34:48</p> <p>16 MS. SELTZER: I object to the 09:34:52</p> <p>17 form. 09:34:53</p> <p>18 A. Running the company day to day. 09:34:58</p> <p>19 I mean you need to be more specific if 09:35:01</p> <p>20 you -- 09:35:03</p> <p>21 Q. What did that involve? 09:35:03</p> <p>22 A. It involved working with me in 09:35:15</p> <p>23 overseeing the overall performance of the 09:35:16</p> <p>24 company, dealing with any issues with the 09:35:19</p> <p>25 company, looking at where the company was 09:35:22</p>	<p>1 LEONARD</p> <p>2 interim CEO was LVI Services doing any 09:36:46</p> <p>3 work -- or LVI doing any work at Madison 09:36:52</p> <p>4 Square Garden? 09:36:56</p> <p>5 A. Yes. 09:36:56</p> <p>6 Q. And how big was that contract? 09:36:57</p> <p>7 A. 28 million. 09:37:01</p> <p>8 Q. Is that considered -- 09:37:02</p> <p>9 A. 27.5. 09:37:03</p> <p>10 Q. And is that considered a big 09:37:05</p> <p>11 contract? 09:37:07</p> <p>12 A. Yes. 09:37:07</p> <p>13 Q. And while Mr. Fried was interim 09:37:08</p> <p>14 CEO, was LVI doing any work at 130 09:37:09</p> <p>15 Liberty? 09:37:14</p> <p>16 A. Yes. 09:37:14</p> <p>17 Q. And do you know what the value 09:37:16</p> <p>18 of that contract was? 09:37:18</p> <p>19 A. Approximately 30 million. 09:37:19</p> <p>20 Q. Is that considered a big 09:37:32</p> <p>21 contract? 09:37:33</p> <p>22 A. Yes. 09:37:34</p> <p>23 Q. Were those two of the biggest 09:37:34</p> <p>24 contracts LVI had? 09:37:38</p> <p>25 A. Yes. 09:37:39</p>
39	41
<p>1 LEONARD</p> <p>2 functionally, all the responsibilities of 09:35:27</p> <p>3 overseeing the company. Too much to list. 09:35:33</p> <p>4 Q. Now, at this point in time when 09:35:43</p> <p>5 Mr. Fried was interim CEO, what office was 09:35:44</p> <p>6 he working in? 09:35:48</p> <p>7 A. Westport, Connecticut. 09:35:50</p> <p>8 Q. And do you know if he spent any 09:35:51</p> <p>9 time in the New York office during this 09:35:53</p> <p>10 period of time? 09:35:54</p> <p>11 A. I do not personally know. 09:35:55</p> <p>12 Q. Okay. Was Mr. Fried required to 09:35:57</p> <p>13 travel as interim CEO? 09:36:00</p> <p>14 A. I am sure from time to time he 09:36:13</p> <p>15 had to travel, but I don't know his 09:36:15</p> <p>16 travel. 09:36:17</p> <p>17 Q. Okay. And during the time that 09:36:17</p> <p>18 Mr. Fried was interim CEO, did LVI have a 09:36:19</p> <p>19 lot of contracts in New York City? 09:36:22</p> <p>20 A. Rephrase the question because 09:36:33</p> <p>21 I -- I don't understand it. 09:36:34</p> <p>22 Q. Was LVI Services doing a lot of 09:36:35</p> <p>23 work in New York City? 09:36:37</p> <p>24 A. No. 09:36:38</p> <p>25 Q. Was LVI -- while Mr. Fried was 09:36:39</p>	<p>1 LEONARD</p> <p>2 Q. Was LVI doing any other work in 09:37:40</p> <p>3 New York City other than the two we just 09:37:45</p> <p>4 talked about? 09:37:47</p> <p>5 MS. SELTZER: Once again during 09:37:48</p> <p>6 the interim period? 09:37:49</p> <p>7 MR. DATOO: During the interim 09:37:52</p> <p>8 period. 09:37:53</p> <p>9 A. Yes, and just for the record you 09:37:53</p> <p>10 first said LVI services, and I said no 09:37:55</p> <p>11 because LVI Services was not doing the 09:37:59</p> <p>12 work. If you are referring to LVI as a 09:38:01</p> <p>13 whole, any LVI? 09:38:03</p> <p>14 Q. Yes. 09:38:05</p> <p>15 A. Yes. 09:38:05</p> <p>16 Q. Okay. So other than the two we 09:38:05</p> <p>17 just talked about -- 09:38:08</p> <p>18 A. Were they doing work in New 09:38:12</p> <p>19 York? 09:38:14</p> <p>20 Q. New York City. 09:38:14</p> <p>21 A. Or were we doing work in New 09:38:15</p> <p>22 York City? 09:38:19</p> <p>23 Q. Yes. 09:38:19</p> <p>24 A. LVI? 09:38:19</p> <p>25 Q. Yes. 09:38:21</p>

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42	44
<p>1 LEONARD</p> <p>2 A. Yes. 09:38:22</p> <p>3 Q. Can you give me the names of 09:38:22</p> <p>4 other projects that LVI was doing work in 09:38:24</p> <p>5 New York City? 09:38:27</p> <p>6 A. HPD. 09:38:28</p> <p>7 Q. What does that stand for? 09:38:29</p> <p>8 A. You know what? I -- I don't 09:38:30</p> <p>9 remember the acronym off the top of my 09:38:33</p> <p>10 head, but it is downtown. 09:38:35</p> <p>11 Q. I am sorry. Where was the 09:38:37</p> <p>12 location of that? 09:38:39</p> <p>13 A. It is on the west side of New 09:38:40</p> <p>14 York. 09:38:41</p> <p>15 Q. Manhattan? 09:38:42</p> <p>16 A. Yes, midtown. 09:38:45</p> <p>17 Q. And what kind of work was LVI 09:38:45</p> <p>18 doing there? 09:38:49</p> <p>19 A. Abatement and demolition of such 09:38:50</p> <p>20 structures. 09:38:53</p> <p>21 Q. Do you recall what the value of 09:38:53</p> <p>22 that contract was? 09:38:54</p> <p>23 A. There is two contracts, 5 09:38:56</p> <p>24 million each approximately. 09:39:00</p> <p>25 Q. And are those considered large 09:39:01</p>	<p>1 LEONARD</p> <p>2 A. The total value -- 09:40:05</p> <p>3 Q. You know what? 09:40:12</p> <p>4 A. Or what was -- 09:40:13</p> <p>5 Q. Forget that question. I 09:40:14</p> <p>6 withdraw it. 09:40:16</p> <p>7 Was LVI doing a 09:40:17</p> <p>8 substantial -- in your opinion a 09:40:20</p> <p>9 substantial amount of business in New York 09:40:21</p> <p>10 City? 09:40:22</p> <p>11 MS. SELTZER: I object to the 09:40:23</p> <p>12 form, but you can answer. 09:40:24</p> <p>13 A. Yes. 09:40:25</p> <p>14 Q. Was LVI doing the majority of 09:40:26</p> <p>15 its business in New York City? 09:40:29</p> <p>16 A. No. 09:40:31</p> <p>17 Q. Okay. What percentage of LVI's 09:40:31</p> <p>18 business would you say it was doing in New 09:40:35</p> <p>19 York City during this period of time I 09:40:37</p> <p>20 mentioned? 09:40:38</p> <p>21 A. I would have to see reports and 09:40:42</p> <p>22 what I call job by jobs. 09:40:44</p> <p>23 Q. Can you ballpark it? 09:40:45</p> <p>24 A. No. 09:40:47</p> <p>25 Q. Okay. Was LVI -- during this 09:40:47</p>
43	45
<p>1 LEONARD</p> <p>2 contracts? 09:39:03</p> <p>3 A. Yes. 09:39:04</p> <p>4 Q. Any other work that LVI was 09:39:04</p> <p>5 doing in New York City while Mr. Fried was 09:39:08</p> <p>6 interim CEO? 09:39:10</p> <p>7 A. Yes, but not that I can list off 09:39:11</p> <p>8 the top of my head. 09:39:15</p> <p>9 Q. Just give me as many as you can. 09:39:17</p> <p>10 A. When he was interim CEO? 09:39:20</p> <p>11 Q. Yes. Well, you know what? Let's 09:39:22</p> <p>12 broaden the period. Even after the time 09:39:27</p> <p>13 he was interim CEO just say to -- let's 09:39:29</p> <p>14 limit it to the time -- let's start at the 09:39:33</p> <p>15 time Mr. Fried was interim CEO, which 09:39:35</p> <p>16 would be I believe April 2010 to November 09:39:37</p> <p>17 2010, the end of November. 09:39:41</p> <p>18 A. You know what? I can't list 09:39:47</p> <p>19 anything off the top of my head. I know 09:39:49</p> <p>20 there are projects that we were doing, but 09:39:52</p> <p>21 I can't give you the names of them. 09:39:53</p> <p>22 Q. Can you give me an approximate 09:39:55</p> <p>23 number of the total value of the contracts 09:39:57</p> <p>24 LVI Services had during that period of 09:40:01</p> <p>25 time I just mentioned? 09:40:03</p>	<p>1 LEONARD</p> <p>2 period of time, was LVI doing any work at 09:40:54</p> <p>3 Yankee Stadium? 09:40:56</p> <p>4 A. Yes. 09:40:58</p> <p>5 Q. What kind of work was it doing 09:40:58</p> <p>6 at Yankee Stadium? 09:41:01</p> <p>7 A. Abatement and demolition. 09:41:03</p> <p>8 Q. And what was the value of that 09:41:05</p> <p>9 contract? 09:41:06</p> <p>10 A. Over 3 million. 09:41:07</p> <p>11 Q. Is that considered a large 09:41:14</p> <p>12 contract? 09:41:16</p> <p>13 A. Yes. 09:41:17</p> <p>14 Q. Now, did Mr. Fried play a role 09:41:17</p> <p>15 in securing the MSG contract? 09:41:28</p> <p>16 A. Yes. 09:41:31</p> <p>17 Q. What role did he play? 09:41:32</p> <p>18 A. He met with the procurement 09:41:35</p> <p>19 manager or head of procurement for Turner, 09:41:42</p> <p>20 and he also met with the Madison Square 09:41:47</p> <p>21 Garden project team regarding issues with 09:41:51</p> <p>22 some perceptual information regarding our 09:41:56</p> <p>23 company that concerned them and also 09:42:00</p> <p>24 regarding some pricing when we submitted 09:42:03</p> <p>25 in terms of our bid. 09:42:08</p>

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<p>1 LEONARD</p> <p>2 Q. Would you say he helped LVI in 09:42:10</p> <p>3 securing the contract? 09:42:13</p> <p>4 A. Yes. 09:42:13</p> <p>5 Q. And with respect to 130 Liberty, 09:42:14</p> <p>6 did Mr. Fried play a role in securing that 09:42:18</p> <p>7 contract? 09:42:21</p> <p>8 A. Not the leading role but he had 09:42:22</p> <p>9 a role. 09:42:28</p> <p>10 Q. And would you say he helped LVI 09:42:28</p> <p>11 secure that contract? 09:42:30</p> <p>12 A. I can't answer that. 09:42:33</p> <p>13 Q. Okay. Is it because you don't 09:42:38</p> <p>14 know or -- 09:42:39</p> <p>15 A. Yes, because I don't know. 09:42:40</p> <p>16 Q. Okay. With respect to HPD, did 09:42:42</p> <p>17 Mr. Fried play a role in securing that 09:42:45</p> <p>18 contract? 09:42:47</p> <p>19 A. I don't know. 09:42:51</p> <p>20 Q. Okay. With respect to Yankee 09:42:52</p> <p>21 Stadium, did Mr. Fried play a role in 09:42:55</p> <p>22 securing that contract? 09:42:59</p> <p>23 A. Yes. 09:43:00</p> <p>24 Q. And what role did he play? 09:43:00</p> <p>25 A. He and I worked with a company 09:43:03</p>	<p>1 LEONARD</p> <p>2 Fried -- in connection with these four 09:44:36</p> <p>3 contracts we just discussed, do you know 09:44:38</p> <p>4 if Mr. Fried made any calls from the 09:44:40</p> <p>5 Westport office to New York with respect 09:44:43</p> <p>6 to these contracts? 09:44:45</p> <p>7 A. Again, to New York what are you 09:44:49</p> <p>8 referring to? 09:44:52</p> <p>9 Q. To MSG, to HPD, to Yankee 09:44:53</p> <p>10 Stadium, to 130 Liberty Street? 09:44:59</p> <p>11 MS. SELTZER: If you know. 09:45:02</p> <p>12 A. I know he made some calls to 09:45:03</p> <p>13 Turner for MSG. 09:45:04</p> <p>14 Q. Who is Turner? 09:45:06</p> <p>15 A. Turner is the general 09:45:07</p> <p>16 contractor. 09:45:08</p> <p>17 Q. Is that Turner Construction 09:45:09</p> <p>18 Company? 09:45:11</p> <p>19 A. Yes. 09:45:12</p> <p>20 Q. Now, while Mr. Fried was the 09:45:12</p> <p>21 interim CEO of LVI service, was he 09:45:26</p> <p>22 searching for a permanent CEO? 09:45:29</p> <p>23 A. Yes. 09:45:34</p> <p>24 Q. Do you know why? 09:45:35</p> <p>25 A. Again, I don't believe he wanted 09:45:36</p>
47	49
<p>1 LEONARD</p> <p>2 called Demco to secure working with them 09:43:09</p> <p>3 as a sub to perform the demolition work. 09:43:16</p> <p>4 Q. And would you say that Mr. Fried 09:43:23</p> <p>5 helped LVI secure that contract? 09:43:30</p> <p>6 A. Yes. 09:43:31</p> <p>7 Q. Now, in connection with these 09:43:32</p> <p>8 four contracts we just talked about, did 09:43:40</p> <p>9 Mr. Fried travel to New York for any 09:43:41</p> <p>10 meetings in connection with these 09:43:46</p> <p>11 contracts? 09:43:47</p> <p>12 A. At least for MSG. 09:43:48</p> <p>13 Q. Do you know how many times? 09:43:58</p> <p>14 A. I know of at least one meeting 09:43:59</p> <p>15 that he went to. 09:44:10</p> <p>16 Q. Do you know when that was? 09:44:11</p> <p>17 A. No. 09:44:12</p> <p>18 Q. Approximately? 09:44:12</p> <p>19 A. You know, it is somewhere in 09:44:18</p> <p>20 either the end of 2009 or the beginning of 09:44:25</p> <p>21 2010. 09:44:27</p> <p>22 Q. Okay. 09:44:28</p> <p>23 A. Or early 2010. I don't know as 09:44:28</p> <p>24 I said exactly. 09:44:33</p> <p>25 Q. Okay. And do you know if Mr. 09:44:34</p>	<p>1 LEONARD</p> <p>2 to run the day-to-day operations. 09:45:38</p> <p>3 Q. Did he tell you what he wanted 09:45:41</p> <p>4 to do once they found -- once LVI Services 09:45:46</p> <p>5 found a new CEO? 09:45:49</p> <p>6 A. Not specifically that I 09:45:50</p> <p>7 remember. 09:45:56</p> <p>8 Q. Okay. Did he tell you that he 09:45:56</p> <p>9 wanted to step back into his chairman 09:45:59</p> <p>10 role? 09:46:02</p> <p>11 A. I believe he did, yes. 09:46:02</p> <p>12 Q. Okay. And did he ever tell you 09:46:07</p> <p>13 that he planned to die in his chair? 09:46:11</p> <p>14 A. Yes. 09:46:14</p> <p>15 Q. And when did he tell you that? 09:46:15</p> <p>16 A. Again, I don't know exactly 09:46:20</p> <p>17 when. He probably told me that several 09:46:26</p> <p>18 times. 09:46:29</p> <p>19 Q. Okay. 09:46:29</p> <p>20 A. But I can't give you an exact 09:46:30</p> <p>21 date. 09:46:31</p> <p>22 Q. How about an approximate date? 09:46:32</p> <p>23 A. Pick a week probably. 09:46:33</p> <p>24 Q. Okay. That often? 09:46:41</p> <p>25 A. No. I would say after, you 09:46:43</p>

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<p style="text-align: right;">58</p> <p>1 LEONARD</p> <p>2 A. I don't recall. 09:55:22</p> <p>3 Q. Do you recall when Mr. State was 09:55:23</p> <p>4 hired? 09:55:24</p> <p>5 A. I believe September, early 09:55:25</p> <p>6 September. 09:55:32</p> <p>7 Q. Early September? 09:55:32</p> <p>8 A. Or it could have been late 09:55:33</p> <p>9 September. 09:55:34</p> <p>10 Q. Okay. 09:55:35</p> <p>11 A. September. 09:55:37</p> <p>12 Q. 2010? 09:55:37</p> <p>13 A. Yes, sir. 09:55:39</p> <p>14 Q. Mr. Leonard, I am handing you a 09:55:39</p> <p>15 document that's been previously marked as 09:55:56</p> <p>16 Plaintiff's Exhibit 10. 09:55:58</p> <p>17 (Document handed to witness.) 09:56:01</p> <p>18 Q. You'll have to bear with me. 09:56:09</p> <p>19 MS. SELTZER: Let the record 09:56:13</p> <p>20 show that Mr. Leonard is not a recipient 09:56:14</p> <p>21 or a sender of these e-mails and as far as 09:56:20</p> <p>22 I can see none of the e-mails in this. 09:56:23</p> <p>23 MR. DATOO: Okay. 09:56:27</p> <p>24 Q. If you can take a look at this 09:56:28</p> <p>25 document. Let me know if you've seen it 09:56:29</p>	<p style="text-align: right;">60</p> <p>1 LEONARD</p> <p>2 effect? 09:57:26</p> <p>3 A. I used words that I don't 09:57:27</p> <p>4 believe Burt will retire. 09:57:31</p> <p>5 Q. And if you can flip to the first 09:57:33</p> <p>6 page, right in the middle of it -- this 09:57:38</p> <p>7 appears to be an e-mail from Scott State 09:57:45</p> <p>8 to Robert Hogan, and it is dated September 09:57:51</p> <p>9 19, 2010. 09:57:53</p> <p>10 A. Yes, sir. 09:57:55</p> <p>11 Q. Do you know if this was prior to 09:57:55</p> <p>12 when Mr. State was hired? 09:57:59</p> <p>13 A. I don't know. 09:58:00</p> <p>14 Q. Why don't you take a look at the 09:58:03</p> <p>15 e-mail and let me know. That might 09:58:05</p> <p>16 refresh your recollection. 09:58:14</p> <p>17 (Pause.) 09:58:15</p> <p>18 A. It looks like it was prior to 09:58:22</p> <p>19 his hiring because he is asking for a 09:58:23</p> <p>20 modification to the proposal. 09:58:25</p> <p>21 Q. Okay. So it appears you did 09:58:27</p> <p>22 have a discussion with Mr. State prior to 09:58:29</p> <p>23 his hire about Mr. Fried, right? 09:58:31</p> <p>24 MS. SELTZER: Objection. He 09:58:33</p> <p>25 never testified to that. I mean how are 09:58:34</p>
<p style="text-align: right;">59</p> <p>1 LEONARD</p> <p>2 before, please. 09:56:31</p> <p>3 (Pause.) 09:56:33</p> <p>4 A. I don't believe so. 09:56:44</p> <p>5 Q. Okay. And can you flip to the 09:56:46</p> <p>6 second page of the document. And you see 09:56:48</p> <p>7 the heading other. Do you see that on the 09:56:52</p> <p>8 page? 09:56:54</p> <p>9 A. Yes. 09:56:54</p> <p>10 Q. If you look at the fourth full 09:56:55</p> <p>11 paragraph underneath that paragraph, it 09:56:57</p> <p>12 starts with "in the best case scenario." 09:57:00</p> <p>13 Do you see that? 09:57:02</p> <p>14 A. Yes. 09:57:03</p> <p>15 Q. If I can direct your attention 09:57:03</p> <p>16 to the second sentence of that paragraph 09:57:04</p> <p>17 it reads: "Several members of the senior 09:57:06</p> <p>18 team have told me that Burt will never 09:57:09</p> <p>19 retire because he has no other interests 09:57:12</p> <p>20 and nothing else to do." 09:57:15</p> <p>21 Do you see that? 09:57:16</p> <p>22 A. Yes. 09:57:17</p> <p>23 Q. Did you tell Mr. State that? 09:57:18</p> <p>24 A. Not verbatim. 09:57:20</p> <p>25 Q. Did you use words to that 09:57:25</p>	<p style="text-align: right;">61</p> <p>1 LEONARD</p> <p>2 you drawing that conclusion? 09:58:37</p> <p>3 MR. DATOO: He said that he 09:58:39</p> <p>4 does not remember having a conversation 09:58:40</p> <p>5 with Mr. State prior to his hire about Mr. 09:58:41</p> <p>6 Fried. 09:58:45</p> <p>7 MS. SELTZER: Right. But when 09:58:45</p> <p>8 did he say that -- I mean he is -- he is 09:58:46</p> <p>9 testified that he has had several 09:58:49</p> <p>10 conversations with Mr. State, right, and 09:58:51</p> <p>11 he did not -- and and said that he didn't 09:58:54</p> <p>12 remember whether they were about Mr. Fried 09:58:58</p> <p>13 or not. 09:59:00</p> <p>14 MR. DATOO: Right. So now I'm 09:59:01</p> <p>15 saying so it appears that you did have a 09:59:01</p> <p>16 conversation with Mr. State. 09:59:05</p> <p>17 MS. SELTZER: That -- I am 09:59:06</p> <p>18 trying to find out where you are drawing 09:59:08</p> <p>19 that from. 09:59:09</p> <p>20 MR. DATOO: The witness just 09:59:10</p> <p>21 testified that he had several phone calls, 09:59:11</p> <p>22 several communications. 09:59:13</p> <p>23 MS. SELTZER: I get that, but 09:59:14</p> <p>24 where from this document are you getting 09:59:16</p> <p>25 that conversation from? 09:59:18</p>

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<p style="text-align: right;">62</p> <p>1 LEONARD</p> <p>2 MR. DATOO: That he said to Mr. 09:59:19</p> <p>3 State or words to the effect in the second 09:59:21</p> <p>4 -- 09:59:23</p> <p>5 MS. SELTZER: Yes, but he 09:59:23</p> <p>6 didn't say when. In other words, you are 09:59:25</p> <p>7 assuming that it was before -- that this 09:59:26</p> <p>8 is what this was referring to. 09:59:28</p> <p>9 Whereas -- 09:59:30</p> <p>10 MR. DATOO: The witness just 09:59:30</p> <p>11 testified that this was before Mr. State 09:59:31</p> <p>12 was hired. 09:59:33</p> <p>13 MS. SELTZER: Yes, I get that, 09:59:34</p> <p>14 but I what I was saying is you are drawing 09:59:36</p> <p>15 the conclusion that he made those 09:59:38</p> <p>16 statements to Mr. State prior to Mr. State 09:59:40</p> <p>17 coming on, and it may not have been the 09:59:41</p> <p>18 case. 09:59:43</p> <p>19 MR. DATOO: The e-mail is dated 09:59:43</p> <p>20 September 19. 09:59:45</p> <p>21 MS. SELTZER: Yes, I know. So 09:59:46</p> <p>22 his testimony that he had this 09:59:48</p> <p>23 conversation about Mr. Fried doesn't 09:59:50</p> <p>24 necessarily have anything to do with what 09:59:51</p> <p>25 is being referenced in this e-mail. 09:59:53</p>	<p style="text-align: right;">64</p> <p>1 LEONARD</p> <p>2 about Burt never retiring. 10:00:36</p> <p>3 MR. DATOO: Yes. 10:00:38</p> <p>4 MS. SELTZER: Right, and you 10:00:39</p> <p>5 asked Mr. Leonard -- unless I am 10:00:40</p> <p>6 misremembering what you said, and you 10:00:42</p> <p>7 asked him if he ever had that conversation 10:00:44</p> <p>8 with State about Burt not retiring. 10:00:50</p> <p>9 Are -- 10:00:50</p> <p>10 MR. DATOO: Prior to Mr. 10:00:50</p> <p>11 State's hire. 10:00:50</p> <p>12 MS. SELTZER: Prior to Mr. 10:00:53</p> <p>13 State's hire? Did you say prior to Mr. 10:00:54</p> <p>14 State's hire? 10:00:57</p> <p>15 MR. DATOO: This is all prior. 10:00:59</p> <p>16 MS. SELTZER: Then I withdraw 10:01:01</p> <p>17 the objection and this entire thing. Go 10:01:02</p> <p>18 ahead. 10:01:04</p> <p>19 Q. Prior to Mr. State's hire it 10:01:05</p> <p>20 appears that you had a conversation with 10:01:08</p> <p>21 him about Mr. Fried, correct? 10:01:10</p> <p>22 A. Correct. 10:01:12</p> <p>23 Q. Okay. And does this refresh 10:01:13</p> <p>24 your recollection as to what you discussed 10:01:16</p> <p>25 with Mr. State prior to his hire about Mr. 10:01:20</p>
<p style="text-align: right;">63</p> <p>1 LEONARD</p> <p>2 I am not trying to be 09:59:54</p> <p>3 obstructionist. I am just telling you 09:59:56</p> <p>4 what he is testifying is that he had those 09:59:57</p> <p>5 conversations with Mr. State, but it 09:59:59</p> <p>6 doesn't necessarily mean that these are 10:00:01</p> <p>7 the conversations that are referred to in 10:00:02</p> <p>8 this e-mail. These could have been other 10:00:04</p> <p>9 management people that said that to him at 10:00:07</p> <p>10 this time. 10:00:09</p> <p>11 MR. DATOO: Right, but I just 10:00:09</p> <p>12 asked him, Mr. Leonard that, and he said 10:00:10</p> <p>13 he did say that to Mr. State. 10:00:12</p> <p>14 MS. SELTZER: Yes, but -- I 10:00:14</p> <p>15 understand that, but did you ask him when 10:00:15</p> <p>16 he said that to Mr. State, before he was 10:00:17</p> <p>17 hired, after he was hired, yesterday? 10:00:19</p> <p>18 MR. DATOO: It would clearly be 10:00:22</p> <p>19 before he was hired because the e-mail is 10:00:23</p> <p>20 dated September 19. I don't -- I am not 10:00:25</p> <p>21 understanding you, Joanne. I am just not 10:00:28</p> <p>22 getting it. 10:00:30</p> <p>23 MS. SELTZER: Okay. You've got 10:00:31</p> <p>24 a name out here, and it talks about senior 10:00:32</p> <p>25 management speaking -- saying something 10:00:34</p>	<p style="text-align: right;">65</p> <p>1 LEONARD</p> <p>2 Fried? 10:01:22</p> <p>3 A. It doesn't refresh it, but I do 10:01:22</p> <p>4 not deny that I could have discussed with 10:01:26</p> <p>5 Mr. State prior to his hiring that I did 10:01:31</p> <p>6 not believe that Burt would retire. 10:01:36</p> <p>7 Q. Why did the issue of Mr. Fried's 10:01:40</p> <p>8 retirement come up in a conversation with 10:01:43</p> <p>9 Mr. State prior to his hire? 10:01:46</p> <p>10 A. Again, I don't know exactly, but 10:01:48</p> <p>11 I assume because I understood that what 10:01:50</p> <p>12 Scott wanted to do was to run the company, 10:01:55</p> <p>13 and he may have asked me if I thought Mr. 10:02:01</p> <p>14 Fried would retire, and if he would have 10:02:03</p> <p>15 asked me or if he did ask me my answer 10:02:06</p> <p>16 would have been or was that I did not 10:02:08</p> <p>17 believe he would retire. 10:02:11</p> <p>18 Q. Okay. Thank you. 10:02:12</p> <p>19 A. You're welcome. Do you want 10:02:16</p> <p>20 this back? 10:02:19</p> <p>21 Q. You can -- you can keep it. 10:02:20</p> <p>22 Just keep them in front of you. I don't 10:02:22</p> <p>23 want to lose them. 10:02:24</p> <p>24 A. Okay. 10:02:26</p> <p>25 Q. I have a bad habit of losing 10:02:27</p>

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<p style="text-align: right;">74</p> <p>1 LEONARD</p> <p>2 end it is my issue. You do your job. 10:12:09</p> <p>3 Q. Now, do you know what exactly 10:12:12</p> <p>4 Mr. Fried was doing that was interfering 10:12:18</p> <p>5 with Mr. State's ability to act as CEO? 10:12:20</p> <p>6 A. I don't know exactly the 10:12:22</p> <p>7 reasons, but I have my opinion on certain 10:12:36</p> <p>8 things. 10:12:39</p> <p>9 Q. Well, give me your opinion. 10:12:40</p> <p>10 A. I believe that Scott thought 10:12:42</p> <p>11 there was a chain of command, and that 10:12:43</p> <p>12 everybody reported and dealt with him, and 10:12:47</p> <p>13 that he would deal with anything he wanted 10:12:50</p> <p>14 to deal with with Burt, and anything else 10:12:53</p> <p>15 just wasn't what he wanted, and there were 10:12:58</p> <p>16 issues that Burt dealt with that I don't 10:13:01</p> <p>17 believe Scott wanted him to deal with. 10:13:07</p> <p>18 Q. Now, do you know if Mr. Fried 10:13:10</p> <p>19 ever attempted to overrule a decision that 10:13:18</p> <p>20 Mr. State made? 10:13:21</p> <p>21 A. I don't know of any such time. 10:13:24</p> <p>22 Q. Do you know if Mr. Fried always 10:13:26</p> <p>23 deferred to Mr. State? 10:13:30</p> <p>24 MS. SELTZER: I object to the 10:13:32</p> <p>25 form. 10:13:33</p>	<p style="text-align: right;">76</p> <p>1 LEONARD</p> <p>2 LVI employees were confused -- let's just 10:14:37</p> <p>3 start with the management team -- as to 10:14:40</p> <p>4 who to report to? 10:14:41</p> <p>5 A. I think the only person that may 10:14:45</p> <p>6 have been confused was Mr. DiCarlo. The 10:14:48</p> <p>7 operational management team I don't 10:14:56</p> <p>8 believe was confused, and I don't know 10:14:58</p> <p>9 about back office, but I think they knew 10:15:01</p> <p>10 they reported to Mr. Cutrone, the CFO. 10:15:06</p> <p>11 Q. Okay. Did you have a 10:15:08</p> <p>12 conversation with Mr. DiCarlo in which you 10:15:10</p> <p>13 told him that he reports to Scott State? 10:15:13</p> <p>14 A. I believe I did. 10:15:15</p> <p>15 Q. Okay. Did that -- in your mind 10:15:16</p> <p>16 would that have ended any confusion as to 10:15:22</p> <p>17 who Mr. DiCarlo reports to? 10:15:22</p> <p>18 A. From my perspective, yes. 10:15:25</p> <p>19 Q. Okay. And do you recall when 10:15:26</p> <p>20 you had that conversation with him? 10:15:28</p> <p>21 A. No, I mean it must have been 10:15:29</p> <p>22 sometime in October I would guess of 2010. 10:15:32</p> <p>23 Q. Early, late? 10:15:35</p> <p>24 A. I don't recall. 10:15:36</p> <p>25 Q. Okay. Now, after Mr. State 10:15:37</p>
<p style="text-align: right;">75</p> <p>1 LEONARD</p> <p>2 A. I believe so. 10:13:34</p> <p>3 Q. Do you know if State ever told 10:13:36</p> <p>4 Mr. Fried not to handle a particular 10:13:42</p> <p>5 assignment? 10:13:46</p> <p>6 A. I don't know that. 10:13:47</p> <p>7 Q. Okay. Do you know if Mr. Fried 10:13:50</p> <p>8 ever refused to give up an assignment or a 10:13:52</p> <p>9 job duty that Mr. State asked him to give 10:13:57</p> <p>10 up? 10:14:00</p> <p>11 A. I don't know that. 10:14:00</p> <p>12 Q. Did Mr. State make very clear to 10:14:01</p> <p>13 LVI employees what the chain of command 10:14:07</p> <p>14 was? 10:14:09</p> <p>15 MS. SELTZER: I object to the 10:14:11</p> <p>16 form. 10:14:12</p> <p>17 A. I don't know if he put out any 10:14:13</p> <p>18 kind of communication. 10:14:21</p> <p>19 Q. Did you know who to report to? 10:14:26</p> <p>20 A. Yes. 10:14:28</p> <p>21 Q. Who? 10:14:28</p> <p>22 A. Scott State. 10:14:29</p> <p>23 Q. How did you know that? 10:14:30</p> <p>24 A. Because I worked for the CEO. 10:14:32</p> <p>25 Q. Okay. Do you know if any of the 10:14:34</p>	<p style="text-align: right;">77</p> <p>1 LEONARD</p> <p>2 started working at LVI Services, was Mr. 10:15:44</p> <p>3 Fried doing a good job on whatever it is 10:15:49</p> <p>4 he was working on? 10:15:50</p> <p>5 A. From my perspective, yes. 10:15:52</p> <p>6 Q. Okay. Now, after Mr. State 10:15:56</p> <p>7 started working at LVI Services, did there 10:15:58</p> <p>8 come a time when Mr. State began 10:16:01</p> <p>9 transitioning Mr. Fried's job duties to 10:16:04</p> <p>10 other employees? 10:16:06</p> <p>11 A. He asked me who could transition 10:16:07</p> <p>12 into his job duties. I don't know if they 10:16:18</p> <p>13 were ever transitioned prior to Burt 10:16:21</p> <p>14 leaving. 10:16:24</p> <p>15 Q. Okay. 10:16:25</p> <p>16 MS. SELTZER: Any time you want 10:16:27</p> <p>17 to take just a five-minute break because 10:16:28</p> <p>18 we have been going an hour and more. 10:16:30</p> <p>19 MR. DATOO: I was just going to 10:16:33</p> <p>20 offer up a break. 10:16:34</p> <p>21 THE VIDEOGRAPHER: We're going 10:16:36</p> <p>22 off the record, 10:16 a.m. End of tape 10:16:37</p> <p>23 number 1. 10:16:41</p> <p>24 (Recess taken.) 10:24:34</p> <p>25 THE VIDEOGRAPHER: We're 10:24:34</p>

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<p style="text-align: right;">114</p> <p>1 LEONARD</p> <p>2 administrative assistant? 11:20:38</p> <p>3 A. No. 11:20:39</p> <p>4 Q. Did any -- who assumed this 11:20:40</p> <p>5 responsibility? 11:20:42</p> <p>6 A. Joe Annarumma. 11:20:42</p> <p>7 Q. The next point, which I believe 11:20:46</p> <p>8 is the 11th point, did you -- did Mr. 11:20:54</p> <p>9 State assume this responsibility? 11:20:58</p> <p>10 A. We haven't dealt with it, but I 11:21:01</p> <p>11 assume he will. 11:21:06</p> <p>12 Q. The next point after that, you 11:21:07</p> <p>13 listed Mark Canessa. Did Mr. Canessa 11:21:13</p> <p>14 assume this responsibility after Mr. Fried 11:21:16</p> <p>15 separated? 11:21:18</p> <p>16 A. Yes. 11:21:21</p> <p>17 Q. Anyone else? 11:21:25</p> <p>18 A. The branches may have. Some 11:21:26</p> <p>19 branches oversee their own submissions. 11:21:41</p> <p>20 Q. And when you mean by 11:21:43</p> <p>21 branches -- 11:21:47</p> <p>22 A. A branch operating office. 11:21:48</p> <p>23 Q. Okay. And is there a particular 11:21:50</p> <p>24 individual who would be responsible for 11:21:52</p> <p>25 this? 11:21:53</p>	<p style="text-align: right;">116</p> <p>1 LEONARD</p> <p>2 MR. DATOO: I am just going to 11:22:44</p> <p>3 ask my next question. 11:22:45</p> <p>4 Q. Do you know if The Bible lists 11:22:46</p> <p>5 who the branch managers are? 11:22:47</p> <p>6 A. Yes. 11:22:50</p> <p>7 Q. Okay. Going on to the next 11:22:50</p> <p>8 point, the next two actually. You listed 11:22:52</p> <p>9 Greg DiCarlo for both. 11:23:02</p> <p>10 Did Mr. DiCarlo assume the 11:23:04</p> <p>11 responsibilities -- these responsibilities 11:23:06</p> <p>12 after Mr. Fried left? 11:23:07</p> <p>13 A. Yes. 11:23:08</p> <p>14 Q. Anyone else? 11:23:09</p> <p>15 A. I don't believe so. 11:23:10</p> <p>16 Q. And the last point, you listed 11:23:20</p> <p>17 Mark Canessa. Do you know if Mr. Canessa 11:23:21</p> <p>18 assumed this responsibility after Mr. 11:23:24</p> <p>19 Fried left? 11:23:26</p> <p>20 A. Yes. 11:23:27</p> <p>21 Q. Anyone else? 11:23:27</p> <p>22 A. I don't believe so. 11:23:28</p> <p>23 Q. Okay. Now, do you know if Mr. 11:23:29</p> <p>24 Fried was performing all of these duties 11:23:34</p> <p>25 while he was chairman under Scott State? 11:23:35</p>
<p style="text-align: right;">115</p> <p>1 LEONARD</p> <p>2 A. The branch president. 11:21:54</p> <p>3 Q. Okay. And who -- how much 11:21:55</p> <p>4 branch presidents are there? 11:21:58</p> <p>5 A. Approximately 22. 11:22:00</p> <p>6 Q. Are you familiar with a document 11:22:03</p> <p>7 that is referred to as The Bible -- The 11:22:08</p> <p>8 Bible? 11:22:16</p> <p>9 A. Yes. 11:22:16</p> <p>10 Q. And would The Bible list who are 11:22:17</p> <p>11 the branch managers? 11:22:19</p> <p>12 MS. SELTZER: Objection. 11:22:21</p> <p>13 I -- he may not even know what you're 11:22:23</p> <p>14 talking about here. 11:22:24</p> <p>15 MR. DATOO: He just said he is 11:22:26</p> <p>16 familiar with the document known as The 11:22:27</p> <p>17 Bible. 11:22:29</p> <p>18 MS. SELTZER: Did he say that 11:22:30</p> <p>19 he's seen it? 11:22:31</p> <p>20 MR. DATOO: He is familiar with 11:22:32</p> <p>21 it. 11:22:33</p> <p>22 MS. SELTZER: Okay, but he may 11:22:34</p> <p>23 have heard about it, but that doesn't 11:22:36</p> <p>24 necessarily mean that he's actually seen 11:22:39</p> <p>25 it. You may want to clarify it now. 11:22:41</p>	<p style="text-align: right;">117</p> <p>1 LEONARD</p> <p>2 A. For the most part, I believe so, 11:23:37</p> <p>3 yes. 11:23:43</p> <p>4 Q. Do you know if Mr. State made 11:23:43</p> <p>5 any comment about Mr. Fried's age? 11:23:57</p> <p>6 MS. SELTZER: I object to the 11:23:59</p> <p>7 form, but you can answer. 11:24:00</p> <p>8 A. Secondhand, yes. 11:24:02</p> <p>9 Q. Okay. And how did you find out 11:24:03</p> <p>10 secondhand? 11:24:08</p> <p>11 A. I believe from Mr. State and Mr. 11:24:09</p> <p>12 Fried. 11:24:12</p> <p>13 Q. And do you know what the comment 11:24:12</p> <p>14 was? 11:24:15</p> <p>15 A. Not verbatim. 11:24:16</p> <p>16 Q. Do you know -- can you tell me 11:24:22</p> <p>17 in general? 11:24:26</p> <p>18 A. I believe it was a comment to 11:24:26</p> <p>19 the effect you're 71. What are you going 11:24:34</p> <p>20 to do going forward or what are you going 11:24:39</p> <p>21 to do for the rest of your life or 11:24:42</p> <p>22 something to that -- 11:24:45</p> <p>23 Q. Okay. And you said you heard 11:24:47</p> <p>24 this from Mr. Fried and Mr. State? 11:24:49</p> <p>25 A. I believe so. 11:24:52</p>

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<p>1 LEONARD</p> <p>2 number 2. 11:54:53</p> <p>3 (Recess taken.) 12:04:22</p> <p>4 THE VIDEOGRAPHER: We're 12:04:22</p> <p>5 returning to the record 12:04 a.m. -- 12:04:23</p> <p>6 12:04 p.m., beginning of tape number 3. 12:04:28</p> <p>7 Q. Mr. Leonard, are you familiar 12:04:31</p> <p>8 with Shari Dembin? 12:04:32</p> <p>9 A. Yes. 12:04:33</p> <p>10 Q. How so? 12:04:34</p> <p>11 A. I have worked with her for many 12:04:35</p> <p>12 years, and I have known her for longer. 12:04:37</p> <p>13 Q. Okay. And was she employed by 12:04:40</p> <p>14 LVI Services? 12:04:42</p> <p>15 A. Yes. 12:04:43</p> <p>16 Q. Do you know for how long? 12:04:44</p> <p>17 A. Approximately? 12:04:45</p> <p>18 Q. Yes. 12:04:54</p> <p>19 A. Ten to fifteen years. 12:04:55</p> <p>20 Q. Okay. And do you know if she is 12:04:57</p> <p>21 related to Mr. Fried? 12:04:59</p> <p>22 A. I do. 12:05:00</p> <p>23 Q. And how do you know that? 12:05:01</p> <p>24 A. Generally I know that because 12:05:03</p> <p>25 she had the same last name, and I know her 12:05:09</p>	<p>1 LEONARD</p> <p>2 bonds, you know, taking in the requests 12:06:02</p> <p>3 and sending them out and getting them back 12:06:07</p> <p>4 from the bonding company. She oversaw the 12:06:09</p> <p>5 travel in terms of working with Garber. 12:06:16</p> <p>6 She oversaw all of our company 12:06:19</p> <p>7 paraphernalia, shirts and things like 12:06:25</p> <p>8 that. She did insurance requests, 12:06:30</p> <p>9 certificates of insurance. She oversaw 12:06:37</p> <p>10 any company meeting that we had as an 12:06:40</p> <p>11 internal company. 12:06:42</p> <p>12 Q. And how long was she performing 12:06:44</p> <p>13 these duties for? 12:06:45</p> <p>14 A. Over ten years. 12:06:46</p> <p>15 Q. Okay. And do you know what her 12:06:54</p> <p>16 work performance was like? 12:06:58</p> <p>17 A. Not specifically, but overall, 12:06:59</p> <p>18 you know, anything I had to do with was 12:07:05</p> <p>19 always very good. 12:07:07</p> <p>20 Q. And do you know who she reported 12:07:09</p> <p>21 to? 12:07:10</p> <p>22 A. No. 12:07:10</p> <p>23 Q. Would it have been Mr. 12:07:20</p> <p>24 Annarumma? 12:07:26</p> <p>25 MS. SELTZER: Objection. 12:07:27</p>
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<p>1 LEONARD</p> <p>2 mother and brother and sister. 12:05:11</p> <p>3 Q. Family friends? 12:05:14</p> <p>4 A. Yes. 12:05:15</p> <p>5 Q. Okay. And when did you first 12:05:16</p> <p>6 find out that Ms. Dembin was related to 12:05:18</p> <p>7 Mr. Fried? 12:05:21</p> <p>8 A. I don't know when I first found 12:05:22</p> <p>9 out but many, many years ago. 12:05:28</p> <p>10 Q. Okay. And how is she related to 12:05:30</p> <p>11 Mr. Fried? 12:05:33</p> <p>12 A. She is his daughter. 12:05:33</p> <p>13 Q. And do you know what her job 12:05:35</p> <p>14 title was, her last job title? 12:05:36</p> <p>15 MS. SELTZER: With LVI? 12:05:38</p> <p>16 MR. DATOO: With LVI Services. 12:05:41</p> <p>17 A. Not specifically. 12:05:42</p> <p>18 Q. Generally? 12:05:43</p> <p>19 A. Yes, risk management and 12:05:44</p> <p>20 bonding. 12:05:48</p> <p>21 Q. And do you know what her job 12:05:53</p> <p>22 duties were? 12:05:54</p> <p>23 A. Generally. 12:05:55</p> <p>24 Q. What were they? 12:05:55</p> <p>25 A. She oversaw all bonds, bid 12:05:56</p>	<p>1 LEONARD</p> <p>2 A. On -- on some responsibilities, 12:07:28</p> <p>3 yes. 12:07:30</p> <p>4 Q. And the others, do you know who 12:07:30</p> <p>5 she might have reported to? 12:07:32</p> <p>6 A. Mr. Fried. 12:07:37</p> <p>7 Q. Now, did there come a time when 12:07:39</p> <p>8 Ms. Dembin was terminated? 12:07:41</p> <p>9 A. When you say terminated, let go, 12:07:43</p> <p>10 yes. 12:07:51</p> <p>11 Q. Separated? 12:07:51</p> <p>12 A. Separated. 12:07:52</p> <p>13 Q. Left. 12:07:53</p> <p>14 A. Separated. 12:07:54</p> <p>15 Q. And when was that? 12:07:55</p> <p>16 A. I believe January 15, 2011. 12:07:57</p> <p>17 Q. Why? 12:08:01</p> <p>18 A. Reduction in force. 12:08:02</p> <p>19 Q. Who made the decision to include 12:08:05</p> <p>20 her in the RIF? By RIF I mean reduction in 12:08:09</p> <p>21 force. 12:08:13</p> <p>22 A. Understood. You know, I believe 12:08:14</p> <p>23 it was a group decision in terms of 12:08:18</p> <p>24 cutting all overhead we could. 12:08:26</p> <p>25 Q. Who was part of that group that 12:08:29</p>

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<p style="text-align: right;">150</p> <p>1 LEONARD</p> <p>2 made the decision? 12:08:30</p> <p>3 A. Scott, regional managers, 12:08:31</p> <p>4 myself, Paul Cutrone. 12:08:39</p> <p>5 Q. And when was the decision to 12:08:40</p> <p>6 include her in the RIF first made? 12:08:46</p> <p>7 A. I don't think there was ever an 12:08:49</p> <p>8 inclusion or noninclusion for Shari 12:08:51</p> <p>9 specifically. 12:08:57</p> <p>10 Q. Well, when was she first 12:08:58</p> <p>11 identified as someone who should or could 12:09:00</p> <p>12 be laid off? 12:09:03</p> <p>13 A. I would say -- we had -- we had 12:09:08</p> <p>14 a meeting in Colorado where we presented 12:09:10</p> <p>15 the budgets, and at that time we saw that 12:09:14</p> <p>16 we were in trouble in terms of overall 12:09:17</p> <p>17 spend on the SG and A compared to our 12:09:25</p> <p>18 revenue goals. So at that time, somewhere 12:09:30</p> <p>19 at that time it was discussed on reducing 12:09:33</p> <p>20 anywhere we could both, you know, on the 12:09:38</p> <p>21 grant side, which was very thin at the 12:09:44</p> <p>22 time anyway, or anywhere else. 12:09:47</p> <p>23 Q. Now, was it after at that 12:09:49</p> <p>24 meeting or after where you started 12:09:51</p> <p>25 discussing specific people to lay off? 12:09:53</p>	<p style="text-align: right;">152</p> <p>1 LEONARD</p> <p>2 A. Because the Westport office 12:11:07</p> <p>3 could be reduced and consolidated in terms 12:11:12</p> <p>4 of its size in -- in the square footage 12:11:17</p> <p>5 that was needed for legal, and it was a 12:11:21</p> <p>6 nonoperating office. 12:11:27</p> <p>7 Q. Now, was -- was Ms. Dembin 12:11:28</p> <p>8 offered the opportunity to work out of 12:11:37</p> <p>9 another office, so she could have avoided 12:11:38</p> <p>10 being laid off? 12:11:41</p> <p>11 A. I don't believe so. 12:11:42</p> <p>12 Q. Why not? 12:11:43</p> <p>13 A. Because it was believed that her 12:11:49</p> <p>14 duties could be done with people that we 12:11:49</p> <p>15 had in New York. 12:11:51</p> <p>16 Q. Who -- who believed that? 12:11:52</p> <p>17 A. I think everybody involved. 12:11:58</p> <p>18 Q. Now, why wasn't -- was this a 12:12:04</p> <p>19 new revelation to the group or is 12:12:11</p> <p>20 this -- the fact that her job duties could 12:12:17</p> <p>21 be performed by others? 12:12:17</p> <p>22 MS. SELTZER: I object to the 12:12:19</p> <p>23 form. 12:12:20</p> <p>24 A. No, this was a necessity in 12:12:21</p> <p>25 terms of trying to stay alive for the 12:12:24</p>
<p style="text-align: right;">151</p> <p>1 LEONARD</p> <p>2 A. It was after, probably after 12:09:55</p> <p>3 that meeting. Yes, maybe it was discussed 12:09:56</p> <p>4 at that meeting as well. I don't recall 12:10:01</p> <p>5 specifically. 12:10:03</p> <p>6 Q. Okay. And why was Ms. Dembin 12:10:04</p> <p>7 identified as someone who should or could 12:10:08</p> <p>8 be laid off? 12:10:10</p> <p>9 A. Actually, it was reducing the 12:10:11</p> <p>10 Westport office, so it was everybody at 12:10:19</p> <p>11 the office besides legal, and she was in 12:10:23</p> <p>12 that office. 12:10:27</p> <p>13 Q. Did you -- why didn't you reduce 12:10:30</p> <p>14 legal as well? 12:10:35</p> <p>15 A. Because it was our belief that 12:10:40</p> <p>16 we needed legal for contract review and 12:10:42</p> <p>17 legal matters, and it would not make sense 12:10:45</p> <p>18 to reduce it and go to outside services 12:10:48</p> <p>19 that would be way in excess of doing it 12:10:54</p> <p>20 ourselves. 12:10:57</p> <p>21 Q. Why did you decide to reduce the 12:10:57</p> <p>22 Westport office or target the Westport 12:10:59</p> <p>23 office? 12:11:05</p> <p>24 MS. SELTZER: I object to the 12:11:06</p> <p>25 form. 12:11:07</p>	<p style="text-align: right;">153</p> <p>1 LEONARD</p> <p>2 company. 12:12:31</p> <p>3 Q. Well, do you know how much she 12:12:31</p> <p>4 made a year? 12:12:32</p> <p>5 A. Yes. 12:12:33</p> <p>6 Q. How much? 12:12:33</p> <p>7 A. 85,000. 12:12:34</p> <p>8 Q. And do you know -- did LVI have 12:12:41</p> <p>9 previous layoffs prior to January -- the 12:12:43</p> <p>10 layoff that occurred in January 2011? 12:12:45</p> <p>11 A. I am sure. 12:12:48</p> <p>12 Q. Do you know why Ms. Dembin was 12:12:49</p> <p>13 never identified or was not 12:12:50</p> <p>14 identified -- sorry. 12:12:54</p> <p>15 MR. DATOO: Strike that. 12:12:54</p> <p>16 Q. Do you know why Ms. Dembin 12:12:55</p> <p>17 wasn't laid off in connection with the 12:12:57</p> <p>18 prior layoffs? 12:12:58</p> <p>19 A. The prior layoffs could have 12:12:59</p> <p>20 been at the branch level. It could have 12:13:02</p> <p>21 been on a job level. You know, the 12:13:04</p> <p>22 question you asked is so broad. So 12:13:06</p> <p>23 it -- it has nothing do with the Westport 12:13:09</p> <p>24 office because -- you need to be more 12:13:13</p> <p>25 specific in terms of previous layoffs. 12:13:17</p>

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<p>1 LEONARD</p> <p>2 Q. Well, in connection -- well, 12:13:19</p> <p>3 let's talk about this layoff. 12:13:21</p> <p>4 A. Okay. 12:13:23</p> <p>5 Q. Maybe we will work backwards. 12:13:24</p> <p>6 How did you -- how did this group identify 12:13:26</p> <p>7 who to lay off? 12:13:31</p> <p>8 MS. SELTZER: I object to the 12:13:32</p> <p>9 form. 12:13:33</p> <p>10 A. It was basically any nonrevenue 12:13:36</p> <p>11 producing employee that could be let go to 12:13:41</p> <p>12 where we could continue operating. 12:13:50</p> <p>13 Q. And did you -- did this group 12:13:54</p> <p>14 look at every nonrevenue producing 12:13:58</p> <p>15 employee in the LVI organization? 12:14:02</p> <p>16 A. I believe they did. 12:14:06</p> <p>17 Q. And how many total people were 12:14:10</p> <p>18 laid off in January of 2011? 12:14:17</p> <p>19 A. I don't know the exact number. 12:14:20</p> <p>20 Q. Do you know who was laid off? 12:14:22</p> <p>21 A. I don't know exactly. I need to 12:14:24</p> <p>22 see the list that we had. 12:14:31</p> <p>23 MR. DATOO: 51. 12:14:49</p> <p>24 (Plaintiff's Exhibit 51 marked 12:14:51</p> <p>25 for identification.) 12:14:52</p>	<p>1 LEONARD</p> <p>2 Q. Was she considered nonrevenue 12:16:05</p> <p>3 producing? 12:16:07</p> <p>4 A. Yes. 12:16:08</p> <p>5 Q. And who is Robin Keller? 12:16:08</p> <p>6 A. She was a receptionist at the 12:16:11</p> <p>7 Westport office. 12:16:16</p> <p>8 Q. Nonrevenue producing? 12:16:17</p> <p>9 A. Yes. 12:16:19</p> <p>10 Q. We know who Shari Dembin is. 12:16:20</p> <p>11 Was she nonrevenue producing? 12:16:29</p> <p>12 A. Yes. 12:16:31</p> <p>13 Q. How about Peggy Craemer? 12:16:32</p> <p>14 A. Yes. 12:16:34</p> <p>15 Q. Nonrevenue producing? 12:16:34</p> <p>16 A. Yes. 12:16:36</p> <p>17 Q. Do you know what her job title 12:16:36</p> <p>18 was? 12:16:38</p> <p>19 A. No. 12:16:38</p> <p>20 Q. Do you know what office she 12:16:38</p> <p>21 worked in? 12:16:41</p> <p>22 A. Yes. 12:16:42</p> <p>23 Q. What office? 12:16:42</p> <p>24 A. Westport. 12:16:43</p> <p>25 Q. Do you know what she did? 12:16:43</p>
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<p>1 LEONARD</p> <p>2 (Document handed to witness. 12:14:53</p> <p>3 Q. Mr. Leonard, you have in front 12:14:54</p> <p>4 of you a document that has been marked as 12:14:56</p> <p>5 Plaintiff's Exhibit 51. 12:14:58</p> <p>6 Can you review the document and 12:15:00</p> <p>7 let me know if you have seen it before? 12:15:01</p> <p>8 A. Yes. 12:15:03</p> <p>9 Q. Okay. Can you flip to the 12:15:03</p> <p>10 second page? 12:15:06</p> <p>11 A. Yes. 12:15:12</p> <p>12 Q. Do you know if this lists all 12:15:13</p> <p>13 the employees that were laid off in 12:15:17</p> <p>14 connection with the January 2011 RIF? 12:15:19</p> <p>15 A. Yes. 12:15:22</p> <p>16 Q. Okay. Now, who is Lorraine 12:15:22</p> <p>17 Glenn? 12:15:37</p> <p>18 A. She is an employee that worked 12:15:37</p> <p>19 in New York. 12:15:38</p> <p>20 Q. What was her position? 12:15:39</p> <p>21 A. I don't know her job title. 12:15:41</p> <p>22 Q. Do you know what she did? 12:15:43</p> <p>23 A. She did some work in workers 12:15:46</p> <p>24 comp and risk management, some insurance 12:15:52</p> <p>25 items working I think for Joe Annarumma. 12:15:57</p>	<p>1 LEONARD</p> <p>2 A. Yes, marketing prequalification 12:16:45</p> <p>3 information, submissions. 12:16:51</p> <p>4 Q. Okay. How about Marcy Juran, 12:16:54</p> <p>5 was she nonrevenue producing? 12:16:58</p> <p>6 A. Yes. 12:17:00</p> <p>7 Q. Do you know what she did? 12:17:01</p> <p>8 A. Yes. 12:17:02</p> <p>9 Q. What? 12:17:04</p> <p>10 A. Again, assisted in submitting 12:17:05</p> <p>11 prequals and graphics in marketing. 12:17:11</p> <p>12 Q. Okay. Do you know who Kristin 12:17:14</p> <p>13 Braun is? 12:17:20</p> <p>14 A. Yes. 12:17:21</p> <p>15 Q. Was she nonrevenue producing? 12:17:21</p> <p>16 A. Yes. 12:17:23</p> <p>17 Q. What office did she work in? 12:17:23</p> <p>18 A. Westport. 12:17:25</p> <p>19 Q. And do you know what she did? 12:17:26</p> <p>20 A. Yes. 12:17:27</p> <p>21 Q. What? 12:17:28</p> <p>22 A. Assisted in marketing and 12:17:29</p> <p>23 prequals in the Westport office with 12:17:32</p> <p>24 Peggy and Marcy. 12:17:36</p> <p>25 Q. Do you know who Jerry Fields is? 12:17:37</p>

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<p>1 LEONARD</p> <p>2 A. Yes. 12:17:39</p> <p>3 Q. And what office did he work in? 12:17:39</p> <p>4 A. Texas. 12:17:42</p> <p>5 Q. And was he considered nonrevenue 12:17:44</p> <p>6 producing? 12:17:48</p> <p>7 A. As far as I was concerned, yes. 12:17:49</p> <p>8 Q. What do you mean by that? 12:17:52</p> <p>9 A. He worked in a branch that was 12:17:53</p> <p>10 an operating branch, but I did not believe 12:17:58</p> <p>11 he was producing and performing to what 12:18:02</p> <p>12 was needed. 12:18:05</p> <p>13 Q. So was he a performance 12:18:06</p> <p>14 termination? 12:18:08</p> <p>15 A. No, he was we could reduce and 12:18:09</p> <p>16 live without him. 12:18:19</p> <p>17 Q. Was he in a revenue-producing 12:18:20</p> <p>18 role? 12:18:22</p> <p>19 A. Yes. 12:18:22</p> <p>20 Q. Do you feel that he was doing a 12:18:23</p> <p>21 good job? 12:18:29</p> <p>22 MS. SELTZER: Objection. You 12:18:31</p> <p>23 can answer. 12:18:32</p> <p>24 A. Fair. 12:18:33</p> <p>25 Q. And why was he included in the 12:18:35</p>	<p>1 LEONARD</p> <p>2 could do what we were doing at the time 12:19:31</p> <p>3 without his services. 12:19:35</p> <p>4 Q. Okay. Do you know who Ron 12:19:36</p> <p>5 Nardone is? 12:19:39</p> <p>6 A. Yes. 12:19:40</p> <p>7 Q. What office did he work in? 12:19:41</p> <p>8 A. Technically out of -- you know, 12:19:43</p> <p>9 he was a corporate employee, but he worked 12:19:47</p> <p>10 the majority of time in the Boston office. 12:19:49</p> <p>11 Q. And was he a nonrevenue 12:19:52</p> <p>12 producing employee? 12:19:59</p> <p>13 A. No. 12:20:00</p> <p>14 Q. He was in a revenue-producing 12:20:00</p> <p>15 role? 12:20:02</p> <p>16 A. Yes. 12:20:02</p> <p>17 Q. And why was he included in the 12:20:03</p> <p>18 layoff? 12:20:04</p> <p>19 A. Same as above. We did not 12:20:05</p> <p>20 believe we needed his services to make the 12:20:08</p> <p>21 revenues and profits that we had 12:20:12</p> <p>22 projected. 12:20:14</p> <p>23 Q. Okay. And Charles Lafever, do 12:20:15</p> <p>24 you know who he is? 12:20:21</p> <p>25 A. Yes, Lafever. 12:20:21</p>
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<p>1 LEONARD</p> <p>2 layoff? 12:18:37</p> <p>3 A. We believed we could produce the 12:18:38</p> <p>4 same revenue without him. 12:18:41</p> <p>5 Q. And who is Matt Dembin? -- do 12:18:43</p> <p>6 you know who Matt Dembin is? 12:18:50</p> <p>7 A. I do. 12:18:51</p> <p>8 Q. And what office did he work in? 12:18:51</p> <p>9 A. Out of the Westport office. 12:18:53</p> <p>10 Q. And was he a nonrevenue 12:18:59</p> <p>11 producing employee? 12:19:01</p> <p>12 A. No. 12:19:01</p> <p>13 Q. Okay. So he worked in a revenue 12:19:07</p> <p>14 producing role? 12:19:09</p> <p>15 A. Yes. 12:19:10</p> <p>16 Q. Why was he included in the 12:19:11</p> <p>17 layoff? 12:19:13</p> <p>18 A. Because we believed we could 12:19:14</p> <p>19 achieve the goals without him. 12:19:16</p> <p>20 Q. Was he a performance 12:19:18</p> <p>21 termination? 12:19:22</p> <p>22 MS. SELTZER: I object to the 12:19:23</p> <p>23 form. 12:19:24</p> <p>24 A. Again, it wasn't for 12:19:24</p> <p>25 performance. It was that we believed we 12:19:29</p>	<p>1 LEONARD</p> <p>2 Q. Lafever. 12:20:23</p> <p>3 A. Yes. He was in corporate 12:20:25</p> <p>4 business development as well. 12:20:26</p> <p>5 Q. Was he a nonrevenue producing 12:20:32</p> <p>6 employee? 12:20:34</p> <p>7 A. No, he was a revenue-producing 12:20:34</p> <p>8 employee. 12:20:36</p> <p>9 Q. And what office did he work out 12:20:36</p> <p>10 of? 12:20:37</p> <p>11 A. I believe the home office. 12:20:38</p> <p>12 Q. Do you know where he lived? 12:20:39</p> <p>13 A. I believe Pennsylvania, but I am 12:20:41</p> <p>14 not -- not a hundred percent sure. 12:20:48</p> <p>15 Q. And do you know who Mike 12:20:50</p> <p>16 Debene -- 12:20:56</p> <p>17 A. Debenedet -- 12:20:57</p> <p>18 Q. -- Mr. Debenedet is? 12:20:59</p> <p>19 A. Yes. 12:21:01</p> <p>20 Q. And did he work in a nonrevenue 12:21:01</p> <p>21 producing role? 12:21:03</p> <p>22 A. No. 12:21:04</p> <p>23 Q. He worked in a revenue-producing 12:21:12</p> <p>24 role? 12:21:14</p> <p>25 A. No. He was project manager, so 12:21:14</p>

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<p style="text-align: right;">162</p> <p>1 LEONARD</p> <p>2 he supported, but he did not create 12:21:21</p> <p>3 revenue. 12:21:28</p> <p>4 Q. And what office did he work in? 12:21:29</p> <p>5 A. Connecticut. 12:21:30</p> <p>6 Q. Westport or Milford? 12:21:31</p> <p>7 A. I am sorry. Milford, 12:21:33</p> <p>8 Connecticut. 12:21:35</p> <p>9 Q. And why was he included in the 12:21:35</p> <p>10 layoff? 12:21:37</p> <p>11 A. We believed we could achieve the 12:21:38</p> <p>12 budget goals we had in Connecticut without 12:21:39</p> <p>13 his services. 12:21:42</p> <p>14 Q. So now were -- were any other 12:21:42</p> <p>15 employees other than those that appear on 12:21:56</p> <p>16 this list considered for layoff? 12:22:00</p> <p>17 A. No, all employees. 12:22:06</p> <p>18 Q. And do you know why out of the 12:22:06</p> <p>19 -- out of the 11 employees that were laid 12:22:14</p> <p>20 off, do you know why six of them came from 12:22:16</p> <p>21 the Westport office? 12:22:24</p> <p>22 MS. SELTZER: I object to the 12:22:26</p> <p>23 form. 12:22:27</p> <p>24 A. I -- yes, because it was a 12:22:30</p> <p>25 nonproducing office that we thought we 12:22:33</p>	<p style="text-align: right;">164</p> <p>1 LEONARD</p> <p>2 their services. 12:23:42</p> <p>3 Q. Now, did you ever have any 12:23:43</p> <p>4 conversations with Ms. Dembin's 12:23:51</p> <p>5 supervisors about including her in the 12:23:55</p> <p>6 RIF? 12:24:00</p> <p>7 MS. SELTZER: I object to the 12:24:01</p> <p>8 form. 12:24:02</p> <p>9 A. When you say any discussions 12:24:06</p> <p>10 with her supervisors, as to making her 12:24:07</p> <p>11 part of the RIF? 12:24:11</p> <p>12 Q. Yes. 12:24:12</p> <p>13 A. I don't believe so. 12:24:13</p> <p>14 Q. Then why did you -- why did you 12:24:19</p> <p>15 include -- how did you know that she 12:24:21</p> <p>16 wasn't essential or necessary or someone 12:24:24</p> <p>17 else could do her job duties? 12:24:26</p> <p>18 MS. SELTZER: I object to the 12:24:28</p> <p>19 form. 12:24:29</p> <p>20 A. Because it was stated that they 12:24:29</p> <p>21 could be done in New York. 12:24:32</p> <p>22 Q. Who stated it? 12:24:34</p> <p>23 A. Joseph Annarumma. 12:24:35</p> <p>24 Q. Okay. And so did you have a 12:24:38</p> <p>25 discussion with Mr. Annarumma about 12:24:43</p>
<p style="text-align: right;">163</p> <p>1 LEONARD</p> <p>2 could consolidate or shrink. 12:22:36</p> <p>3 Q. Who suggested that Ms. Dembin be 12:22:43</p> <p>4 included in the -- in the RIF? 12:22:47</p> <p>5 MS. SELTZER: Objection. Asked 12:22:51</p> <p>6 and answered. 12:22:53</p> <p>7 A. I don't believe anybody 12:22:54</p> <p>8 suggested it. 12:22:55</p> <p>9 Q. So how did her name come up? 12:22:56</p> <p>10 MS. SELTZER: Again. 12:22:59</p> <p>11 A. Because she was an employee at 12:23:01</p> <p>12 the Westport office. 12:23:03</p> <p>13 Q. Did you look -- did the group 12:23:04</p> <p>14 look at other branch offices to determine 12:23:06</p> <p>15 whether they could be closed or reduced? 12:23:10</p> <p>16 A. Yes. 12:23:15</p> <p>17 Q. And were there any other offices 12:23:16</p> <p>18 that you determined could be closed or 12:23:17</p> <p>19 reduced? 12:23:19</p> <p>20 A. No, except for Jerry Fields and 12:23:20</p> <p>21 Mike Debenedet. 12:23:27</p> <p>22 Q. I am sorry. What -- what do you 12:23:28</p> <p>23 mean by that? 12:23:32</p> <p>24 A. They were in branch offices that 12:23:34</p> <p>25 we thought could deliver the goals without 12:23:36</p>	<p style="text-align: right;">165</p> <p>1 LEONARD</p> <p>2 Ms. Dembin's job duties? 12:24:45</p> <p>3 A. Not specifically, no. 12:24:47</p> <p>4 Q. How about generally? 12:24:51</p> <p>5 A. I don't know even generally. 12:24:52</p> <p>6 I -- I am sure someone had a discussion 12:24:58</p> <p>7 that it could be handled in his staff. 12:25:01</p> <p>8 Q. I am sorry. I don't know what 12:25:05</p> <p>9 you mean. Can you -- can you explain it 12:25:08</p> <p>10 to me? 12:25:10</p> <p>11 A. I -- you know, I don't recall 12:25:10</p> <p>12 if I had a conversation with him, but 12:25:12</p> <p>13 I -- I am assume that someone had a 12:25:15</p> <p>14 conversation that it could be dealt with 12:25:17</p> <p>15 by his staff in New York. 12:25:19</p> <p>16 Q. You mean her job duties could be 12:25:20</p> <p>17 assumed by his staff in New York? 12:25:26</p> <p>18 A. Correct. 12:25:27</p> <p>19 Q. Okay. And do you know who is 12:25:28</p> <p>20 performing Ms. Dembin's job duties 12:25:30</p> <p>21 currently? 12:25:32</p> <p>22 A. Not specifically. 12:25:33</p> <p>23 Q. How about generally? 12:25:35</p> <p>24 A. I believe Kathy Majors and Jovan 12:25:37</p> <p>25 Vaughn handle those along with Jeannie 12:25:44</p>

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<p>1 LEONARD</p> <p>2 Nagy. 12:25:53</p> <p>3 Q. Is Ms. Nagy in New York? 12:25:54</p> <p>4 A. No. She is a paralegal in 12:25:56</p> <p>5 Connecticut. 12:25:58</p> <p>6 Q. In Westport, Connecticut? 12:25:59</p> <p>7 A. Yes, sir. 12:26:01</p> <p>8 Q. Is the office still open? 12:26:01</p> <p>9 A. Right now, yes. 12:26:03</p> <p>10 Q. When is it going to close? 12:26:09</p> <p>11 A. When the lease is up in the 12:26:10</p> <p>12 office or if it is subleased prior. 12:26:12</p> <p>13 Q. And do you know where the legal 12:26:14</p> <p>14 team is going to move to? 12:26:15</p> <p>15 A. No. 12:26:16</p> <p>16 Q. Were there any employees who 12:26:17</p> <p>17 were considered for layoff that were not 12:26:39</p> <p>18 laid off? 12:26:43</p> <p>19 MS. SELTZER: Objection. Asked 12:26:44</p> <p>20 and answered. 12:26:46</p> <p>21 A. Not to my knowledge. 12:26:46</p> <p>22 Q. So everyone on the list were 12:26:50</p> <p>23 always on the list -- 12:26:57</p> <p>24 MS. SELTZER: Objection. 12:26:58</p> <p>25 Q. -- of people to be laid off? 12:26:59</p>	<p>1 LEONARD</p> <p>2 THE VIDEOGRAPHER: We're 12:30:25</p> <p>3 returning to the record, 12:30 p.m. 12:30:26</p> <p>4 Q. If I can -- Mr. Leonard, if I 12:30:37</p> <p>5 could direct your attention to Exhibit 51 12:30:40</p> <p>6 again. 12:30:43</p> <p>7 MS. SELTZER: The last one. 12:30:48</p> <p>8 A. This one? 12:30:49</p> <p>9 Q. Yes, the first page. It appears 12:30:50</p> <p>10 to be an e-mail from to all regional 12:30:54</p> <p>11 managers, and I think Mr. -- the COO, CFO. 12:30:59</p> <p>12 I assume that includes Mr. Cutrone and 12:31:05</p> <p>13 yourself. 12:31:08</p> <p>14 A. (Witness nodding). 12:31:10</p> <p>15 Q. Now, you e-mailed a list of 12:31:13</p> <p>16 proposed employee reductions, correct? 12:31:15</p> <p>17 A. Yes. 12:31:18</p> <p>18 Q. And which group of people came 12:31:19</p> <p>19 up with this list? 12:31:24</p> <p>20 A. Basically the group that the 12:31:25</p> <p>21 e-mail was sent to. 12:31:33</p> <p>22 Q. So that included Mr. State, Mr. 12:31:34</p> <p>23 Cutrone, yourself, and the regional 12:31:37</p> <p>24 managers? 12:31:39</p> <p>25 A. Yes. 12:31:40</p>
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<p>1 LEONARD</p> <p>2 MS. SELTZER: I object to form. 12:27:01</p> <p>3 A. I mean when you say always on 12:27:03</p> <p>4 the list -- 12:27:05</p> <p>5 Q. Well did any -- 12:27:09</p> <p>6 A. -- this was the list. 12:27:10</p> <p>7 Q. I am sorry. If you turn to the 12:27:11</p> <p>8 document you have in front of you. 12:27:16</p> <p>9 A. Yes. 12:27:17</p> <p>10 Q. Were any of other people -- 12:27:18</p> <p>11 other than the people that appear on this 12:27:20</p> <p>12 list, were there any other names or were 12:27:22</p> <p>13 there any other people who were selected 12:27:27</p> <p>14 for layoff but were not laid off or 12:27:29</p> <p>15 identified for layoff but were not laid 12:27:33</p> <p>16 off? 12:27:36</p> <p>17 MS. SELTZER: I object to the 12:27:36</p> <p>18 form, but you can answer if you understand 12:27:37</p> <p>19 it. 12:27:40</p> <p>20 A. I don't believe so. 12:27:40</p> <p>21 MR. DATOO: Why don't we take a 12:27:56</p> <p>22 break for a few minutes. 12:27:58</p> <p>23 THE VIDEOGRAPHER: We're going 12:27:59</p> <p>24 off the record. The time is 12:28 p.m.. 12:28:00</p> <p>25 (Recess taken.) 12:30:25</p>	<p>1 LEONARD</p> <p>2 Q. Okay. 12:31:40</p> <p>3 A. But it included people that 12:31:44</p> <p>4 worked for them as well. 12:31:46</p> <p>5 Q. What do you mean? 12:31:49</p> <p>6 A. Whoever, you know, was the 12:31:50</p> <p>7 oversight, they were supposed to go down 12:31:55</p> <p>8 and see if there was anybody that could be 12:31:58</p> <p>9 in the list, which I sent again and made 12:32:01</p> <p>10 sure that we looked at everywhere we can. 12:32:05</p> <p>11 So, you know, Cutrone to his people, took 12:32:07</p> <p>12 care of his people. Regional managers 12:32:13</p> <p>13 took care of their areas. Everyone took 12:32:15</p> <p>14 care of theirs areas and scrubbed to see 12:32:20</p> <p>15 what the -- what people we could propose 12:32:20</p> <p>16 to reduce overhead. 12:32:24</p> <p>17 Q. Okay. And did anyone add any 12:32:26</p> <p>18 employees to the list? 12:32:36</p> <p>19 A. After this list? 12:32:37</p> <p>20 Q. Yes. 12:32:39</p> <p>21 A. No. 12:32:40</p> <p>22 Q. Okay. 12:32:41</p> <p>23 A. At that time. 12:32:46</p> <p>24 Q. What do you mean? 12:32:46</p> <p>25 A. I can't say that there hasn't 12:32:49</p>

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<p>1 LEONARD</p> <p>2 been any layoffs since January 15. 12:32:52</p> <p>3 Q. Okay. 12:32:54</p> <p>4 A. There may as well -- there may 12:32:55</p> <p>5 have been some since then. 12:32:57</p> <p>6 Q. Have there been? 12:32:59</p> <p>7 A. Yes. There has been some. 12:33:00</p> <p>8 Q. Do you know when that layoff 12:33:19</p> <p>9 occurred? 12:33:20</p> <p>10 A. No. I just know off the top of 12:33:21</p> <p>11 my head we have had -- we have reduced 12:33:25</p> <p>12 more in a couple of places, and we have 12:33:28</p> <p>13 let a couple of people go. 12:33:30</p> <p>14 Q. Was it a -- was it a RIF or were 12:33:32</p> <p>15 they performance terminations? 12:33:36</p> <p>16 A. No, for the most part 12:33:37</p> <p>17 performance and/or RIF. There may have 12:33:41</p> <p>18 been one or two RIFs where we just decided 12:33:46</p> <p>19 we could go forward without of them. 12:33:48</p> <p>20 Q. One or two RIFs or just one or 12:33:51</p> <p>21 two employees that had been -- 12:33:53</p> <p>22 A. One or two employees. 12:33:54</p> <p>23 Q. Okay. Do you know what office 12:33:56</p> <p>24 those employees came from? 12:33:57</p> <p>25 A. One was in I believe the Florida 12:33:58</p>	<p>1 LEONARD</p> <p>2 A. I don't believe so. 12:35:12</p> <p>3 Q. Okay. So how long before you 12:35:13</p> <p>4 sent this e-mail did you have a list of 12:35:21</p> <p>5 names of people that were proposed to be 12:35:25</p> <p>6 laid off? 12:35:28</p> <p>7 MS. SELTZER: You mean the list 12:35:29</p> <p>8 that is attached? 12:35:32</p> <p>9 MR. DATOO: Right. 12:35:33</p> <p>10 A. Knowing myself, ten minutes, but 12:35:33</p> <p>11 I am not sure. 12:35:35</p> <p>12 Q. Okay. Do you know who developed 12:35:36</p> <p>13 this list? 12:35:37</p> <p>14 A. The group that I just discussed, 12:35:38</p> <p>15 the regional management, CFO, COO. 12:35:43</p> <p>16 Q. Do you know -- did you receive 12:35:47</p> <p>17 this list by e-mail? 12:35:49</p> <p>18 A. No, I think I created this list. 12:35:50</p> <p>19 Q. Okay. And what did you -- did 12:35:52</p> <p>20 you create this list based off of 12:35:54</p> <p>21 anything? 12:35:56</p> <p>22 A. Based off the discussions with 12:35:56</p> <p>23 the group. 12:35:59</p> <p>24 Q. And did you create this list 12:35:59</p> <p>25 immediately after you had a discussion 12:36:02</p>
171	173
<p>1 LEONARD</p> <p>2 corp. -- the Florida office. 12:34:08</p> <p>3 Q. Do you know what -- what he or 12:34:12</p> <p>4 she did? 12:34:14</p> <p>5 A. One was a health and safety 12:34:14</p> <p>6 officer. 12:34:17</p> <p>7 Q. Okay. 12:34:17</p> <p>8 A. And I am trying to think if 12:34:19</p> <p>9 there are any others that -- 12:34:21</p> <p>10 A. We also did some in Connecticut 12:34:26</p> <p>11 as well, four or five employees there or 12:34:30</p> <p>12 two or three employees there. 12:34:33</p> <p>13 Q. In Milford? 12:34:34</p> <p>14 A. Yes. 12:34:35</p> <p>15 Q. Do you know what positions they 12:34:36</p> <p>16 occupied? 12:34:37</p> <p>17 A. Project management and -- and 12:34:38</p> <p>18 administrative. 12:34:43</p> <p>19 Q. Now, were there any prior 12:34:44</p> <p>20 versions of the list that you attached to 12:34:51</p> <p>21 your e-mail? 12:34:55</p> <p>22 A. I don't believe so. 12:34:56</p> <p>23 Q. Okay. Are there any e-mails 12:34:58</p> <p>24 that -- that discuss names of particular 12:35:01</p> <p>25 people or positions? 12:35:10</p>	<p>1 LEONARD</p> <p>2 with this group? 12:36:05</p> <p>3 MS. SELTZER: Objection. Asked 12:36:06</p> <p>4 and answered. 12:36:07</p> <p>5 A. No, because this was discussed 12:36:08</p> <p>6 and talked about and put together over a 12:36:12</p> <p>7 period of time, you know, a couple of 12:36:17</p> <p>8 weeks at least. 12:36:20</p> <p>9 Q. Okay. And that was after the 12:36:20</p> <p>10 regional managers meeting you had? 12:36:24</p> <p>11 A. Yes. 12:36:26</p> <p>12 Q. Okay. Now, the employees that 12:36:27</p> <p>13 were laid off in connection with the 12:36:38</p> <p>14 January 2011 RIF, have -- have any of 12:36:39</p> <p>15 them -- have you hired any people 12:36:45</p> <p>16 subsequent to assume their job duties? 12:36:48</p> <p>17 A. No. 12:36:52</p> <p>18 Q. Okay. I asked you very early on 12:36:52</p> <p>19 in the deposition about the total number 12:36:56</p> <p>20 of employees within the entire LVI 12:36:58</p> <p>21 organization. 12:37:02</p> <p>22 Do you recall that? 12:37:02</p> <p>23 A. Yes. 12:37:03</p> <p>24 Q. And I don't remember the answer, 12:37:03</p> <p>25 so I am just going to ask you it again. 12:37:07</p>

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LEONARD

1
2 How many did you say there are? 12:37:09
3 MS. SELTZER: I object to the 12:37:15
4 form. In the -- I think there were 12:37:16
5 two -- two answers there. One was the 12:37:18
6 LVI -- 12:37:20
7 Q. Okay. Well, let's -- actually I 12:37:21
8 do have the answer. I believe you -- you 12:37:23
9 testified earlier that LVI Services 12:37:25
10 employs approximately 50 people; is that 12:37:27
11 correct? 12:37:29
12 A. Yes, maybe less though now. 12:37:30
13 Q. Okay. And within the entire LVI 12:37:33
14 organization, I believe you testified that 12:37:35
15 LVI employs approximately 400 to 500 12:37:38
16 people; is that correct? 12:37:42
17 A. Yes. 12:37:43
18 Q. Okay. Now, is that -- did you 12:37:44
19 only take into account the salaried 12:37:48
20 employees? 12:37:51
21 A. Yes. 12:37:52
22 Q. How many nonsalaried employees 12:37:53
23 work for LVI Services? 12:37:58
24 A. For LVI Services? 12:38:00
25 Q. Yes. 12:38:04

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LEONARD

1
2 A. Minimal. 12:38:08
3 Q. Sorry? 12:38:11
4 A. Very minimal. 12:38:11
5 Q. Okay. And how about for the 12:38:13
6 entire LVI organization? 12:38:14
7 A. It depends on the day, 2 to 12:38:16
8 3,000. 12:38:18
9 Q. Okay. 12:38:19
10 MR. DATOO: Okay. Thank you 12:38:24
11 very much. I have no further questions. 12:38:26
12 THE VIDEOGRAPHER: We're going 12:38:27
13 off the record. 12:38 p.m. End of 12:38:28
14 today's questioning. 12:38:31
15 (Time noted: 12:38 p.m.) 12:38:37
16
17
18
19
20 JOHN LEONARD
21
22 Subscribed and sworn to before me
23 this day of , 2011
24
25

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LEONARD

CERTIFICATION

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5
6 I, DEBBIE ZAROMATIDIS, a Shorthand
7 Reporter and a Notary Public, do hereby
8 certify that the foregoing witness, JOHN
9 LEONARD, was duly sworn on the date
10 indicated, and that the foregoing is a
11 true and accurate transcription of my
12 stenographic notes.
13 I further certify that I am not
14 employed by nor related to any party to
15 this action.
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DEBBIE ZAROMATIDIS

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LEONARD

EXHIBITS

1
2
3
4 PLAINTIFF'S
5 EXHIBIT DESCRIPTION PAGE
6 31A E-mail with attachment 91
7 49 E-mail 130
8 50 E-mail 132
9 51 Document 154
10 52 E-mail 100
11 53 E-mail 101
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Exhibit 8

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
No. 10 Civ. 9308 (JSR)

-----x

BURTON T. FRIED,

Plaintiff,

- against -

LVI SERVICES, INC., LVI PARENT CORP., CODE
HENNESSY SIMMONS, LLC d/b/a CHS PRIVATE
EQUITY V LP; APOLLO INVESTMENT CORP.,
SCOTT E. STATE, in his official and
individual capacities; BRIAN SIMMONS, in
his official and individual capacities;
RAJAY BAGARIA, in his official and
individual capacities; GERALD J. GIRARDI,
in his official and individual capacities,
Defendants.

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June 1, 2011

2:03 p.m.

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<p>1 2 3 4 VIDEOTAPE DEPOSITION of JOHN 5 SCHNABEL, taken by the Plaintiff, pursuant 6 to Notice, held at the offices of Thompson 7 Wigdor & Gilly, LLP, 85 Fifth Avenue, New 8 York, New York, before Debbie Zaromatidis, 9 a Shorthand Reporter and Notary Public of 10 the State of New York. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>2 4 1 SCHNABEL 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND 5 AGREED by and between the Attorneys for 6 the respective parties hereto that filing 7 and sealing be and the same are hereby 8 waived. 9 IT IS FURTHER STIPULATED AND 10 AGREED that all objections except as to 11 the form of the question, shall be 12 reserved to the time of the trial. 13 IT IS FURTHER STIPULATED AND 14 AGREED that the within examination may be 15 signed and sworn to before any notary 16 public with the same force and effect as 17 though signed and sworn to before this 18 Court. 19 20 21 22 23 24 25</p>
<p>3 1 2 APPEARANCES: 3 4 THOMPSON WIGDOR & GILLY, LLP 5 Attorneys for Plaintiff 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: SHAFFIN A. DATOO, ESQ. 9 10 11 SIDLEY AUSTIN, LLP 12 Attorneys for Defendants 13 787 Seventh Avenue 14 New York, New York 10019 15 BY: JOANNE SELTZER, ESQ. 16 17 18 ALSO PRESENT: 19 BURTON FRIED 20 J.D. MARTINEZ, Videographer 21 22 23 24 25</p>	<p>5 1 SCHNABEL 2 THE VIDEOGRAPHER: We are on 02:03:51 3 the record. My name is J.D. Martinez of 02:04:27 4 Veritext New York. The date today is June 02:04:30 5 1, 2011, and the time is approximately 02:04:32 6 2:04 p.m. This deposition is being held 02:04:35 7 in the office of Thompson Wigdor & Gilly 02:04:38 8 LLP located at 85 Fifth Avenue, New York, 02:04:41 9 New York. The caption of this case is 02:04:44 10 Burton T. Fried versus LVI Services, Inc. 02:04:46 11 et al. filed in the United States District 02:04:49 12 Court, Southern District of New York. The 02:04:52 13 name of the witness is John Schanbel. 02:04:55 14 At this time the attorneys will 02:04:58 15 identify themselves and the parties they 02:04:59 16 represent after which our court reporter 02:05:02 17 Debbie Zaromatidis will swear in the 02:05:03 18 witness, and we can proceed. 02:05:05 19 MS. SELTZER: Joanne Seltzer at 02:05:07 20 Sidley Austin, LLP on behalf of all 02:05:10 21 defendants in this matter. 02:05:11 22 MR. DATOO: Shaffin Datto, 02:05:13 23 Thompson Wigdor & Gilly on behalf of the 02:05:15 24 plaintiff Burt Fried. 02:05:25 25</p>

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22	24
<p>1 SCHNABEL</p> <p>2 MS. SELTZER: I object to the 02:20:59</p> <p>3 form. You can answer. 02:21:00</p> <p>4 A. There would be obviously formal 02:21:01</p> <p>5 board meetings, but there would be monthly 02:21:06</p> <p>6 written updates from the company on 02:21:10</p> <p>7 performance, and there would be impromptu 02:21:13</p> <p>8 phone calls, not scheduled phone calls but 02:21:18</p> <p>9 impromptu ones with Burt or later Scott 02:21:20</p> <p>10 State and probably more with Paul Cutrone 02:21:25</p> <p>11 than anyone else between me or my -- my 02:21:28</p> <p>12 staff. 02:21:34</p> <p>13 Q. Do you still have any of these 02:21:35</p> <p>14 monthly written updates that you just 02:21:36</p> <p>15 referred to? 02:21:39</p> <p>16 A. Yes, it would be the normal 02:21:39</p> <p>17 monthly reporting package from the CFO. 02:21:41</p> <p>18 Q. Okay. And what was contained in 02:21:44</p> <p>19 those updates? 02:21:46</p> <p>20 A. Mostly operating results, 02:21:47</p> <p>21 financial statements, the normal financial 02:21:53</p> <p>22 statements as well as key operating 02:21:56</p> <p>23 metrics. 02:21:59</p> <p>24 MR. DATOO: Joanne, I'll put it 02:22:03</p> <p>25 in writing, but I just want to put it on 02:22:04</p>	<p>1 SCHNABEL</p> <p>2 accessible, and that is how we dealt with 02:23:03</p> <p>3 it, so it was a little bit informal. 02:23:06</p> <p>4 Q. And how often would you have 02:23:08</p> <p>5 these informal communications with 02:23:09</p> <p>6 management? 02:23:11</p> <p>7 A. I would say on an average basis 02:23:11</p> <p>8 twice a month, two or three times a month. 02:23:15</p> <p>9 Q. Okay. Now, how many employees 02:23:17</p> <p>10 does LVI Services have? 02:23:23</p> <p>11 A. Salaried or total? 02:23:25</p> <p>12 Q. In total. 02:23:31</p> <p>13 A. I really don't know the answer 02:23:32</p> <p>14 to that. 02:23:37</p> <p>15 Q. Hundreds, thousands? 02:23:39</p> <p>16 A. I would say low thousands. 02:23:41</p> <p>17 Q. Low thousands. And was this 02:23:43</p> <p>18 true -- 02:23:52</p> <p>19 A. And it is a guess by the way. 02:23:53</p> <p>20 It is a guess. 02:23:54</p> <p>21 Q. Okay. And was that number 02:23:55</p> <p>22 around the same in 2010, all of 2010? 02:23:57</p> <p>23 A. Well, I think we -- there 02:24:00</p> <p>24 is -- it is a project oriented business. 02:24:04</p> <p>25 So it depended upon the project flow at 02:24:06</p>
23	25
<p>1 SCHNABEL</p> <p>2 the record. I would like production of 02:22:07</p> <p>3 these monthly written updates for 2009 and 02:22:08</p> <p>4 2010. 02:22:11</p> <p>5 MS. SELTZER: I think we 02:22:12</p> <p>6 produced to you everything that we had 02:22:13</p> <p>7 marked board members, but I will -- I will 02:22:16</p> <p>8 check. 02:22:17</p> <p>9 MR. DATOO: Okay. 02:22:19</p> <p>10 Q. So other than attending board 02:22:21</p> <p>11 meetings and receiving these monthly 02:22:23</p> <p>12 written updates and I think -- 02:22:28</p> <p>13 A. I am sorry. And there is 02:22:29</p> <p>14 also -- along with that would be on a 02:22:31</p> <p>15 monthly basis the CFO would write some 02:22:33</p> <p>16 sort of a synopsis of those results. 02:22:35</p> <p>17 MR. DATOO: Okay. Joanne, I 02:22:38</p> <p>18 would like to include that in my request. 02:22:39</p> <p>19 MS. SELTZER: Put it in 02:22:41</p> <p>20 writing. I'll take it under advisement. 02:22:43</p> <p>21 Q. And did you mention that you 02:22:51</p> <p>22 were involved in some phone calls as well? 02:22:52</p> <p>23 A. Yes. If we had any questions, 02:22:55</p> <p>24 we would usually just pick up the phone 02:22:58</p> <p>25 and call. Management was always -- always 02:23:01</p>	<p>1 SCHNABEL</p> <p>2 the time, and so they were not all 02:24:08</p> <p>3 full-time employees I would say. So -- 02:24:12</p> <p>4 and 2010 wasn't a banner year. So I 02:24:14</p> <p>5 suspect that we actually had less employee 02:24:17</p> <p>6 hours in 2010 than we did in previous -- 02:24:19</p> <p>7 the previous year. That is a guess. 02:24:22</p> <p>8 Q. Can you ballpark how many 02:24:25</p> <p>9 employees you had in 2010? 02:24:27</p> <p>10 A. No, I could not. 02:24:28</p> <p>11 Q. Would it be in the hundreds or 02:24:30</p> <p>12 in the -- 02:24:31</p> <p>13 A. It would be the same answer. It 02:24:32</p> <p>14 is a complete guess on my part so 02:24:34</p> <p>15 thousands. If I said that before as a 02:24:36</p> <p>16 guess I would stick with that. 02:24:38</p> <p>17 Q. Okay. Does LVI Services have 02:24:39</p> <p>18 any offices? 02:24:45</p> <p>19 MS. SELTZER: Offices? 02:24:47</p> <p>20 MR. DATOO: Offices. 02:24:48</p> <p>21 A. Yes. 02:24:49</p> <p>22 Q. How many ballpark? 02:24:50</p> <p>23 A. Ballpark 20. 02:24:53</p> <p>24 Q. Okay. Do you know who Robert 02:24:54</p> <p>25 McNamara is? 02:24:59</p>

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<p style="text-align: right;">26</p> <p>1 SCHNABEL</p> <p>2 A. Yes. 02:25:01</p> <p>3 Q. Who is he? 02:25:01</p> <p>4 A. The former CEO of LVI. 02:25:02</p> <p>5 Q. And did Falcon have an 02:25:05</p> <p>6 investment in LVI when Mr. McNamara was 02:25:10</p> <p>7 CEO? 02:25:14</p> <p>8 A. I -- I do not believe so, and 02:25:15</p> <p>9 this is a little bit of -- trying to 02:25:18</p> <p>10 remember what happened in 2005. We were 02:25:20</p> <p>11 endeavoring to have Burt trans -- transfer 02:25:22</p> <p>12 over to a chairman role and bring in a 02:25:28</p> <p>13 CEO. We were actively looking for a CEO 02:25:30</p> <p>14 in the time period before the sale of the 02:25:35</p> <p>15 company, and I believe Bob McNamara was 02:25:37</p> <p>16 hired only after the sale. 02:25:40</p> <p>17 Q. Okay. Do you know why Mr. Fried 02:25:41</p> <p>18 was going to transition to a chairman 02:25:45</p> <p>19 role? 02:25:47</p> <p>20 A. That was his wish. 02:25:48</p> <p>21 Q. Okay. And as chairman do you 02:25:49</p> <p>22 know what his job duties were? 02:25:55</p> <p>23 MS. SELTZER: I am sorry. Just 02:26:00</p> <p>24 objection. Under Robert McNamara? 02:26:01</p> <p>25 MR. DATOO: Yes. 02:26:04</p>	<p style="text-align: right;">28</p> <p>1 SCHNABEL</p> <p>2 Burt, but as we made our investment -- we 02:27:06</p> <p>3 made our toehold investment, we started 02:27:10</p> <p>4 speaking to Burt. It was clear that, you 02:27:14</p> <p>5 know, he was fully engaged, and he was a 02:27:17</p> <p>6 respected member and was somebody 02:27:20</p> <p>7 who -- you would want to talk to if you 02:27:22</p> <p>8 were going to make an investment in this 02:27:25</p> <p>9 company. 02:27:26</p> <p>10 Q. When did you I guess sell your 02:27:26</p> <p>11 investment in LVI? 02:27:29</p> <p>12 A. In 2005 along with Blue Point, 02:27:31</p> <p>13 who controlled the investment at that 02:27:33</p> <p>14 time. 02:27:35</p> <p>15 Q. And when did you I guess make 02:27:35</p> <p>16 another investment? 02:27:39</p> <p>17 A. In 2009. So we had fully 02:27:41</p> <p>18 divested our private investment in 2005 02:27:44</p> <p>19 with Blue Point. In 2000 -- early 2009 02:27:47</p> <p>20 through a series of transactions we 02:27:51</p> <p>21 accumulated senior debt, LVI senior debt. 02:27:53</p> <p>22 Q. All right. Now, did there come 02:27:57</p> <p>23 a time when Mr. Fried became the interim 02:28:10</p> <p>24 CEO -- 02:28:12</p> <p>25 A. Yes. 02:28:13</p>
<p style="text-align: right;">27</p> <p>1 SCHNABEL</p> <p>2 A. Under Robert McNamara. I do not 02:26:04</p> <p>3 know specifically what they were, but in 02:26:10</p> <p>4 talking to Burt I realized that he had 02:26:12</p> <p>5 quite in depth knowledge of the business. 02:26:19</p> <p>6 So that he was not -- he was a caretaker, 02:26:21</p> <p>7 chairman, very active. What his 02:26:26</p> <p>8 day-to-day duties were wasn't clear, but 02:26:28</p> <p>9 you could talk to him about the -- the 02:26:30</p> <p>10 most strategic matter, and he would have 02:26:33</p> <p>11 an understanding of it and could give an 02:26:35</p> <p>12 opinion about it. 02:26:37</p> <p>13 Q. So you don't know exactly what 02:26:38</p> <p>14 he did, but you do know he knew the 02:26:40</p> <p>15 business well? 02:26:42</p> <p>16 A. Yes. 02:26:42</p> <p>17 Q. Okay. Do you know what his work 02:26:43</p> <p>18 performance was like as chairman? 02:26:45</p> <p>19 A. Under Bob McNamara? 02:26:48</p> <p>20 Q. Yes. 02:26:51</p> <p>21 A. I don't -- I don't really know. 02:26:52</p> <p>22 From after we sold the business until we 02:26:54</p> <p>23 reentered the business there really is a 02:26:58</p> <p>24 kind of a dark period there where I don't 02:27:01</p> <p>25 really have -- have any interaction with 02:27:03</p>	<p style="text-align: right;">29</p> <p>1 SCHNABEL</p> <p>2 Q. -- of LVI. Do you know when 02:28:13</p> <p>3 that was? 02:28:15</p> <p>4 A. I want to say that it is March 02:28:15</p> <p>5 of 2010. 02:28:30</p> <p>6 Q. Okay. Do you know why he became 02:28:37</p> <p>7 the interim CEO? 02:28:39</p> <p>8 A. Well, yes. Bob McNamara left 02:28:41</p> <p>9 for another position. We were 02:28:44</p> <p>10 in -- without a CEO. We would start a 02:28:49</p> <p>11 search immediately, but we all realized 02:28:54</p> <p>12 that Burt had been CEO, very capable and 02:28:56</p> <p>13 continued to do that in the interim 02:28:59</p> <p>14 period, and as long as he was willing to 02:29:01</p> <p>15 do that that would be the best outcome. 02:29:02</p> <p>16 Q. Do you know if he asked to be 02:29:05</p> <p>17 interim CEO or he was asked to be interim 02:29:07</p> <p>18 CEO? 02:29:12</p> <p>19 A. I am -- I am sure we asked him. 02:29:13</p> <p>20 I mean I think it is one of those things 02:29:15</p> <p>21 where we kind of look at ourselves -- we 02:29:17</p> <p>22 are looking in the room here and who is 02:29:21</p> <p>23 the guy that has operated this company and 02:29:22</p> <p>24 has done well. Not a bunch of financial 02:29:25</p> <p>25 guys. So I -- I would assume we made the 02:29:27</p>

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<p style="text-align: right;">30</p> <p>1 SCHNABEL</p> <p>2 first move, but I think Burt, who had a 02:29:30</p> <p>3 rather substantial investment in the 02:29:32</p> <p>4 company, also would have thought probably 02:29:34</p> <p>5 he was the right person for the job. 02:29:36</p> <p>6 Q. What do you mean by Burt having 02:29:38</p> <p>7 a substantial investment in the company? 02:29:40</p> <p>8 A. Well, he still had an -- money 02:29:42</p> <p>9 -- monies due him. In what form at that 02:29:46</p> <p>10 point in time in 2010 -- I mean there were 02:29:49</p> <p>11 still some management payment that still 02:29:52</p> <p>12 was owed him. So just by virtue of the 02:29:57</p> <p>13 fact that he had the largest stake it was 02:30:01</p> <p>14 substantial. 02:30:05</p> <p>15 Q. Was he the only one owed 02:30:05</p> <p>16 money -- 02:30:08</p> <p>17 A. On the management team, no. No. 02:30:08</p> <p>18 I would say a top dozen managers at least. 02:30:11</p> <p>19 Q. And why were they owed money? 02:30:14</p> <p>20 A. That was due to the transaction, 02:30:16</p> <p>21 the recapitalization of the company. They 02:30:18</p> <p>22 received a payment on the 02:30:21</p> <p>23 recapitalization. How it was structured 02:30:24</p> <p>24 any more I don't -- don't recall, but 02:30:27</p> <p>25 essentially these were structured as a 02:30:29</p>	<p style="text-align: right;">32</p> <p>1 SCHNABEL</p> <p>2 recapitalization, did the company pay Mr. 02:31:38</p> <p>3 Fried in -- and the other management 02:31:43</p> <p>4 employees any money that they may have 02:31:47</p> <p>5 been entitled to? 02:31:48</p> <p>6 A. Well, obviously salary and 02:31:50</p> <p>7 bonus, sure. I assume so. I -- the last 02:31:52</p> <p>8 time I was really involved with the 02:31:54</p> <p>9 compensation was upon the sale of the 02:31:56</p> <p>10 company in 2005, in which case the 02:31:58</p> <p>11 management team received a substantial 02:32:02</p> <p>12 amount of options. 02:32:07</p> <p>13 Q. Did that at any point jeopardize 02:32:08</p> <p>14 the recapitalization? 02:32:15</p> <p>15 MS. SELTZER: I object to the 02:32:17</p> <p>16 form. You can answer. 02:32:18</p> <p>17 A. It was part of the negotiation. 02:32:19</p> <p>18 I -- the way I would -- I would view it is 02:32:20</p> <p>19 that management wanted to have some sort 02:32:23</p> <p>20 of form of for lack of a better word stay 02:32:27</p> <p>21 bonus of some sort. This was the form 02:32:30</p> <p>22 that it took. That is at least how I -- I 02:32:31</p> <p>23 look at it. That was negotiated. That 02:32:35</p> <p>24 wasn't something that was just given, but, 02:32:37</p> <p>25 you know, the -- there was quite a bit of 02:32:41</p>
<p style="text-align: right;">31</p> <p>1 SCHNABEL</p> <p>2 payment up front and then over time to 02:30:33</p> <p>3 keep management incentivized while the 02:30:35</p> <p>4 company made a turn around. 02:30:40</p> <p>5 Q. And did the company eventually 02:30:41</p> <p>6 pay Mr. Fried and the management team any 02:30:49</p> <p>7 money that was owed? 02:30:51</p> <p>8 A. I think the next payment 02:30:53</p> <p>9 that -- after the recapitalization, the 02:30:55</p> <p>10 next payment I don't believe has been made 02:30:58</p> <p>11 yet, so it is still due and forthcoming. 02:31:00</p> <p>12 Q. And is that payment contingent 02:31:03</p> <p>13 on certain variables or targets or goals? 02:31:05</p> <p>14 A. Those payments are -- are 02:31:11</p> <p>15 different than the -- I don't believe -- I 02:31:13</p> <p>16 don't remember any more that there 02:31:17</p> <p>17 is -- you have to understand there is also 02:31:19</p> <p>18 a management option pool that does have a 02:31:20</p> <p>19 time vesting component and a performance 02:31:25</p> <p>20 component in it. So whether those -- how 02:31:28</p> <p>21 those payments are structured any more I 02:31:31</p> <p>22 don't want to venture a guess. I am just 02:31:32</p> <p>23 not comfortable at it, and I don't 02:31:35</p> <p>24 remember. 02:31:36</p> <p>25 Q. And prior to the 02:31:37</p>	<p style="text-align: right;">33</p> <p>1 SCHNABEL</p> <p>2 conversation about valuation of securities 02:32:45</p> <p>3 that we exchanged for common stock. So 02:32:47</p> <p>4 every constituent at the table had 02:32:50</p> <p>5 something to negotiate, and so I guess if 02:32:53</p> <p>6 you weren't willing to be flexible I guess 02:32:55</p> <p>7 anything could have put that transaction 02:32:58</p> <p>8 in jeopardy, but clearly it was one of the 02:33:00</p> <p>9 more important things on the table. 02:33:02</p> <p>10 Q. And despite that Falcon -- did 02:33:04</p> <p>11 Falcon continue -- 02:33:06</p> <p>12 A. Yes. 02:33:07</p> <p>13 Q. -- with the investment in LVI? 02:33:07</p> <p>14 A. Yes. Well, not only continue. 02:33:09</p> <p>15 I think it is better -- we actually took 02:33:19</p> <p>16 some of other senior notes and exchanged 02:33:21</p> <p>17 them for common. 02:33:23</p> <p>18 Q. What does that mean? 02:33:24</p> <p>19 A. The recapitalization basically 02:33:25</p> <p>20 was -- took -- took the firm's balance 02:33:28</p> <p>21 sheet and essentially shrunk it by paying 02:33:30</p> <p>22 down or converting senior debt, so there 02:33:33</p> <p>23 was less senior debt post transaction than 02:33:35</p> <p>24 there was previously. Some of that was 02:33:37</p> <p>25 done through a cash investment. Some of 02:33:40</p>

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<p style="text-align: right;">34</p> <p>1 SCHNABEL</p> <p>2 that was done through a conversion. 02:33:42</p> <p>3 Falcon did not make a new cash investment 02:33:44</p> <p>4 to the company but took -- willingly took 02:33:47</p> <p>5 some of its senior debt and converted it 02:33:51</p> <p>6 into common. 02:33:54</p> <p>7 Q. Is there any way if you could 02:33:54</p> <p>8 tell me if it is good -- if that is a good 02:33:56</p> <p>9 thing or a bad thing? 02:33:58</p> <p>10 A. If -- if LVI does really well, 02:33:59</p> <p>11 it is a superb thing. 02:34:02</p> <p>12 Q. Okay. 02:34:04</p> <p>13 A. And if the company doesn't do 02:34:05</p> <p>14 well, it is an incredibly stupid thing. 02:34:06</p> <p>15 Q. And how has it turned out so 02:34:09</p> <p>16 far? 02:34:11</p> <p>17 A. So far it is too -- it is too 02:34:11</p> <p>18 early to tell actually. I think the 02:34:13</p> <p>19 company is rebounding, and we still are 02:34:16</p> <p>20 very happy with our investment thus far. 02:34:17</p> <p>21 Q. Okay. Now, while Mr. Fried was 02:34:21</p> <p>22 interim CEO, what -- what job duties was 02:34:28</p> <p>23 he performing? Do you know? 02:34:32</p> <p>24 A. He was performing all the duties 02:34:34</p> <p>25 that he had done in -- in the past I -- I 02:34:39</p>	<p style="text-align: right;">36</p> <p>1 SCHNABEL</p> <p>2 performance? 02:35:56</p> <p>3 A. We spoke a lot on the phone. It 02:35:57</p> <p>4 was a very difficult business environment. 02:36:05</p> <p>5 It continues to be challenging, but I 02:36:10</p> <p>6 perceived no difference in his -- his 02:36:15</p> <p>7 performance than ever before, and I always 02:36:17</p> <p>8 had the highest respect for him and 02:36:20</p> <p>9 continue -- and continue. So I know -- I 02:36:22</p> <p>10 think he performed the same. 02:36:25</p> <p>11 Q. And while Mr. Fried was the 02:36:26</p> <p>12 interim CEO, did you have any 02:36:28</p> <p>13 conversations or e-mail communications 02:36:31</p> <p>14 with anybody at LVI or any board members 02:36:33</p> <p>15 about Mr. Fried's job duties or his future 02:36:39</p> <p>16 at LVI? 02:36:41</p> <p>17 A. Well, only -- the only time that 02:36:48</p> <p>18 we spoke about his job duties was after 02:36:50</p> <p>19 Scott State had been hired as a CEO. 02:36:52</p> <p>20 Q. Okay. So you -- you didn't have 02:36:55</p> <p>21 any conversations -- 02:36:57</p> <p>22 A. Before that, no. 02:36:59</p> <p>23 Q. Okay. 02:37:00</p> <p>24 A. And frankly, I mean I -- I have 02:37:00</p> <p>25 to say just our opinion as -- as investors 02:37:02</p>
<p style="text-align: right;">35</p> <p>1 SCHNABEL</p> <p>2 assume. Again, I wasn't there from day to 02:34:43</p> <p>3 day, so I couldn't really check what was 02:34:46</p> <p>4 on his desk, but he was involved with all 02:34:48</p> <p>5 the major bidding. He was involved with 02:34:51</p> <p>6 all employee issues, major customer 02:34:54</p> <p>7 issues. So I would assume that he had his 02:35:00</p> <p>8 fingers in every pie as he usually did in 02:35:03</p> <p>9 the past. 02:35:06</p> <p>10 Q. So would it be fair to say that 02:35:07</p> <p>11 he assumed -- he was doing -- he was 02:35:09</p> <p>12 performing the job duties that he held as 02:35:13</p> <p>13 chairman in addition to those that he 02:35:15</p> <p>14 assumed as CEO? 02:35:19</p> <p>15 A. I don't know the answer to that. 02:35:21</p> <p>16 All I can say is that he -- Burt can -- if 02:35:24</p> <p>17 Burt chooses to be the CEO, he could be a 02:35:30</p> <p>18 CEO today as far as I am concerned, so he 02:35:33</p> <p>19 did that role. Now, whether he took some 02:35:38</p> <p>20 of his former responsibilities and gave 02:35:41</p> <p>21 that out or he continued to do them, that 02:35:43</p> <p>22 I don't know. 02:35:46</p> <p>23 Q. Okay. And while Mr. Fried was 02:35:46</p> <p>24 the interim -- interim CEO, do you have 02:35:51</p> <p>25 any personal knowledge of his work 02:35:54</p>	<p style="text-align: right;">37</p> <p>1 SCHNABEL</p> <p>2 in the company was quite independent. We 02:37:11</p> <p>3 did not depend upon anybody else's opinion 02:37:14</p> <p>4 of Burt. We had our own opinion about 02:37:17</p> <p>5 Burt, you know -- 02:37:20</p> <p>6 Q. And what -- what was your 02:37:22</p> <p>7 opinion about Burt? 02:37:24</p> <p>8 A. No -- the highest regard. The 02:37:25</p> <p>9 fact that he was there gave us much 02:37:28</p> <p>10 comfort. 02:37:30</p> <p>11 Q. Are you less comfortable now 02:37:30</p> <p>12 that he is not there? 02:37:32</p> <p>13 A. I would much rather him be 02:37:33</p> <p>14 there. 02:37:35</p> <p>15 Q. Okay. Now, did there come a 02:37:35</p> <p>16 time when Scott State was hired as 02:37:51</p> <p>17 president and CEO of LVI Services? 02:37:53</p> <p>18 A. I mean he was hired -- yes. 02:37:55</p> <p>19 Q. And do you know when that was? 02:38:05</p> <p>20 A. Sometime in 2010. I probably 02:38:09</p> <p>21 should know this. I -- I am guessing the 02:38:15</p> <p>22 summer. 02:38:18</p> <p>23 Q. Don't worry. You're not the 02:38:18</p> <p>24 only one that doesn't know his exact date 02:38:20</p> <p>25 of hire. 02:38:22</p>

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<p style="text-align: right;">42</p> <p>1 SCHNABEL</p> <p>2 anything exceptional in that time period 02:42:48</p> <p>3 that was I would have thought anything 02:42:50</p> <p>4 bizarre was happening or different was 02:42:53</p> <p>5 happening. I assumed it was business as 02:42:55</p> <p>6 usual. 02:42:57</p> <p>7 Q. Okay. Now, where does -- where 02:42:57</p> <p>8 do you keep your office at Falcon? 02:43:03</p> <p>9 A. We have a -- an address at 450 02:43:05</p> <p>10 Park Avenue, which is where I work, but we 02:43:09</p> <p>11 also have a Boston office which is the 02:43:12</p> <p>12 home office. 02:43:13</p> <p>13 Q. And you work in the New York 02:43:14</p> <p>14 office? 02:43:15</p> <p>15 A. I do. 02:43:16</p> <p>16 Q. Okay. Do you live in New York? 02:43:16</p> <p>17 A. I live in Long Island. 02:43:18</p> <p>18 Q. Okay. Now, after Mr. State 02:43:19</p> <p>19 started working at LVI Services, did there 02:43:24</p> <p>20 come a time when Mr. State began 02:43:27</p> <p>21 transitioning Mr. Fried's job duties to 02:43:29</p> <p>22 others? 02:43:31</p> <p>23 MS. SELTZER: I object to the 02:43:33</p> <p>24 form, but you can answer. 02:43:34</p> <p>25 A. I only became aware that some 02:43:35</p>	<p style="text-align: right;">44</p> <p>1 SCHNABEL</p> <p>2 Q. I believe you -- you testified 02:44:56</p> <p>3 that Mr. -- towards the end Mr. Fried was 02:44:58</p> <p>4 no longer responsible for this strategic 02:45:02</p> <p>5 alliance overseas; is that correct? 02:45:06</p> <p>6 A. Yes. 02:45:07</p> <p>7 Q. Do you know who became 02:45:08</p> <p>8 responsible for that? 02:45:09</p> <p>9 A. I think Mr. State wanted to take 02:45:10</p> <p>10 that responsibility directly. 02:45:14</p> <p>11 Q. Okay. 02:45:16</p> <p>12 A. At least that is what Mr. Fried 02:45:17</p> <p>13 told me. 02:45:19</p> <p>14 Q. And do you know if Mr. State 02:45:20</p> <p>15 made a comment about Mr. Fried's age? 02:45:30</p> <p>16 A. Other than in the board meeting, 02:45:33</p> <p>17 kind of the last board meeting that Mr. 02:45:41</p> <p>18 Fried was at, other than that, no. 02:45:44</p> <p>19 Q. Did you ever have a telephone 02:45:45</p> <p>20 conversation with Mr. Fried prior to the 02:45:46</p> <p>21 board meeting in which he told you that 02:45:49</p> <p>22 Mr. State made a comment about his age? 02:45:51</p> <p>23 MS. SELTZER: I object to the 02:45:55</p> <p>24 form, but you can answer. 02:45:56</p> <p>25 A. I don't recall having a specific 02:46:00</p>
<p style="text-align: right;">43</p> <p>1 SCHNABEL</p> <p>2 things were now no longer in his purview 02:43:49</p> <p>3 at the very end of Mr. Burt's tenure 02:43:52</p> <p>4 there -- Mr. Fried's tenure there. So 02:43:58</p> <p>5 before that I was not aware of any 02:44:01</p> <p>6 transferring of duties, but obviously I 02:44:03</p> <p>7 became aware that he was accustomed to 02:44:07</p> <p>8 being involved with certain things and now 02:44:10</p> <p>9 all of a sudden was not either invited to 02:44:11</p> <p>10 be or -- or was told not to be a part of 02:44:15</p> <p>11 something. 02:44:17</p> <p>12 Q. Do you know what those items 02:44:18</p> <p>13 were? 02:44:19</p> <p>14 A. There were some strategic 02:44:19</p> <p>15 alliances, one overseas in particular I 02:44:26</p> <p>16 think in England, which I recall 02:44:30</p> <p>17 specifically. Other than that, there may 02:44:38</p> <p>18 have been others, but I just don't recall 02:44:41</p> <p>19 to be honest. 02:44:43</p> <p>20 Q. With respect to this overseas 02:44:44</p> <p>21 strategic alliance, do you know whose 02:44:46</p> <p>22 purview that fell within? 02:44:50</p> <p>23 MS. SELTZER: I object to the 02:44:52</p> <p>24 form. 02:44:53</p> <p>25 A. Who now -- you mean -- 02:44:53</p>	<p style="text-align: right;">45</p> <p>1 SCHNABEL</p> <p>2 conversation about it. However, I don't 02:46:03</p> <p>3 believe that at that meeting I was 02:46:06</p> <p>4 surprised that -- that Mr. Fried felt that 02:46:08</p> <p>5 way. So we must have had a conversation. 02:46:13</p> <p>6 I mean I -- that is the only way I 02:46:16</p> <p>7 could -- I could have been advised. 02:46:18</p> <p>8 Q. Do you recall when you had that 02:46:20</p> <p>9 conversation with Mr. Fried? 02:46:21</p> <p>10 A. No, I -- I mean I don't remember 02:46:23</p> <p>11 -- I don't specifically remember the 02:46:27</p> <p>12 conversation. So it is hard to say when, 02:46:28</p> <p>13 but my guess is that it would have been 02:46:30</p> <p>14 within the week or two before the meeting. 02:46:33</p> <p>15 Q. And do you recall what was 02:46:35</p> <p>16 discussed? 02:46:37</p> <p>17 A. No, other than certain of his 02:46:38</p> <p>18 legacy responsibilities were taken from 02:46:45</p> <p>19 him and that there seemed to be a real 02:46:49</p> <p>20 problem between them, which is kind of odd 02:46:57</p> <p>21 given the fact that Mr. Fried had actually 02:47:05</p> <p>22 brought Mr. Scott State to the table. So 02:47:12</p> <p>23 it is -- it was a very bizarre story 02:47:14</p> <p>24 actually. 02:47:17</p> <p>25 Q. You -- you mentioned that Mr. 02:47:18</p>

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<p style="text-align: right;">46</p> <p>1 SCHNABEL</p> <p>2 Fried told you that he had some of his 02:47:20</p> <p>3 legacy responsibilities removed from him; 02:47:21</p> <p>4 is that correct? 02:47:24</p> <p>5 A. Yes. 02:47:25</p> <p>6 Q. Did he tell you what those 02:47:26</p> <p>7 legacy responsibilities were? 02:47:28</p> <p>8 A. I think that -- other than 02:47:30</p> <p>9 the -- the strategic alliance overseas, 02:47:40</p> <p>10 the only other thing that specifically 02:47:43</p> <p>11 comes to mind is the contract that was 02:47:44</p> <p>12 negotiated for Madison Square Garden that 02:47:49</p> <p>13 he normally would have reviewed a contract 02:47:53</p> <p>14 of that magnitude and had not. 02:47:58</p> <p>15 Q. Do you know who that was 02:48:09</p> <p>16 assigned to? 02:48:10</p> <p>17 A. I would assume the general 02:48:11</p> <p>18 counsel and I would assume the CEO would 02:48:15</p> <p>19 have looked that as well. 02:48:17</p> <p>20 Q. Now, you also testified that 02:48:18</p> <p>21 there appeared to be a real problem 02:48:22</p> <p>22 between Mr. Fried and Mr. State, correct? 02:48:24</p> <p>23 MS. SELTZER: I object to the 02:48:27</p> <p>24 characterization. 02:48:28</p> <p>25 A. There was a clear miss -- there 02:48:29</p>	<p style="text-align: right;">48</p> <p>1 SCHNABEL</p> <p>2 understood. That was obviously incorrect. 02:49:26</p> <p>3 Q. Understood as to what Mr. 02:49:30</p> <p>4 Fried's role was going to be? 02:49:33</p> <p>5 A. Yes. 02:49:34</p> <p>6 Q. Did Mr. Fried ever tell you if 02:49:34</p> <p>7 Mr. State made -- asked -- did Mr. Fried 02:49:41</p> <p>8 ever tell you if Mr. State asked him how 02:49:48</p> <p>9 long he expected to continue to work at 02:49:50</p> <p>10 LVI? 02:49:52</p> <p>11 A. I am sorry? 02:49:53</p> <p>12 Q. Did Mr. Fried ever tell you -- 02:49:55</p> <p>13 A. Did Mr. Fried -- yes, he did 02:49:57</p> <p>14 tell me that. 02:50:04</p> <p>15 Q. Do you recall when that was? 02:50:04</p> <p>16 A. Sometime before the board 02:50:06</p> <p>17 meeting, a week or two. 02:50:07</p> <p>18 Q. Do you know if it was part of 02:50:08</p> <p>19 the same conversation you may have had? 02:50:11</p> <p>20 A. Probably. 02:50:12</p> <p>21 Q. And do you recall it -- exactly 02:50:13</p> <p>22 what he said other than what you just 02:50:16</p> <p>23 testified to? 02:50:19</p> <p>24 A. Other than that he wasn't 02:50:20</p> <p>25 unhappy -- he was unhappy about that. 02:50:23</p>
<p style="text-align: right;">47</p> <p>1 SCHNABEL</p> <p>2 was clearly a miscommunication between the 02:48:34</p> <p>3 two of them. 02:48:36</p> <p>4 Q. And -- 02:48:37</p> <p>5 A. And so -- and that developed 02:48:39</p> <p>6 quickly. 02:48:41</p> <p>7 Q. And why do you -- why do you say 02:48:41</p> <p>8 that? 02:48:48</p> <p>9 MS. SELTZER: Objection. Which 02:48:48</p> <p>10 part? 02:48:49</p> <p>11 Q. The first part, the 02:48:50</p> <p>12 miscommunication. 02:48:51</p> <p>13 A. Why there was a 02:48:52</p> <p>14 miscommunication? 02:48:53</p> <p>15 Q. Yes. 02:48:54</p> <p>16 A. I am not really sure. That is 02:48:54</p> <p>17 kind of one of the great mysteries of this 02:48:56</p> <p>18 whole thing. Burt has never been 02:49:00</p> <p>19 uncommunicative with me, so I don't know 02:49:02</p> <p>20 Scott as well to be honest. So -- but I 02:49:04</p> <p>21 would assume that we brought him 02:49:09</p> <p>22 into -- into the company as CEO. There 02:49:13</p> <p>23 was a legacy job that Burt had already 02:49:19</p> <p>24 occupied. I assumed it was something that 02:49:21</p> <p>25 they had talked about, and that it was 02:49:23</p>	<p style="text-align: right;">49</p> <p>1 SCHNABEL</p> <p>2 Q. Did he tell you why? 02:50:25</p> <p>3 A. No, I think -- I think the 02:50:27</p> <p>4 statement stood for itself. I mean there 02:50:35</p> <p>5 was no more explanation. 02:50:37</p> <p>6 Q. What do you mean -- how did you 02:50:39</p> <p>7 interpret that statement? 02:50:41</p> <p>8 A. Well, it was among many other 02:50:43</p> <p>9 statements. Right. So he was -- he 02:50:46</p> <p>10 was -- he had a very unpleasant 02:50:48</p> <p>11 conversation with Scott. He did mention 02:50:52</p> <p>12 that. He had also talked about, you know, 02:50:53</p> <p>13 Burt had actually put down on the schedule 02:51:00</p> <p>14 what he had done and what he thought he 02:51:02</p> <p>15 could do going forward that would be 02:51:04</p> <p>16 supportive, and he characterized to me how 02:51:06</p> <p>17 that was not something that Scott would 02:51:13</p> <p>18 contemplate. 02:51:15</p> <p>19 Q. How did you feel about that? 02:51:16</p> <p>20 A. I didn't feel good about that. 02:51:26</p> <p>21 Q. Why not? 02:51:27</p> <p>22 A. Well, I think almost anybody at 02:51:28</p> <p>23 least with a clear mind would rather have 02:51:31</p> <p>24 Burt Fried be a part of the board than not 02:51:33</p> <p>25 be a part of it. So I was happy that 02:51:36</p>

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<p style="text-align: right;">62</p> <p>1 SCHNABEL</p> <p>2 Q. Okay. 03:07:13</p> <p>3 A. In addition to receiving I 03:07:15</p> <p>4 wanted to make sure that I knew from him. 03:07:17</p> <p>5 Q. And did you speak to Mr. Fried 03:07:19</p> <p>6 after you saw this list? 03:07:24</p> <p>7 A. I did. I am sure I did. 03:07:26</p> <p>8 Q. And what did -- do you recall 03:07:31</p> <p>9 when you spoke to Mr. Fried? 03:07:34</p> <p>10 A. I don't, but obviously it would 03:07:35</p> <p>11 be in that week before the board meeting. 03:07:37</p> <p>12 I assume that I would have tried to see 03:07:40</p> <p>13 where he was coming from in all of these 03:07:44</p> <p>14 things. That is why I was sure that 03:07:46</p> <p>15 he -- that all of these responsibilities 03:07:51</p> <p>16 would be subject to the ultimate authority 03:07:53</p> <p>17 of the CEO. 03:07:55</p> <p>18 Q. And in that conversation did he 03:07:56</p> <p>19 agree? 03:08:00</p> <p>20 A. Well, that is what he told me. 03:08:01</p> <p>21 Q. Okay. 03:08:03</p> <p>22 A. That is what he told me. 03:08:04</p> <p>23 Q. I am sorry? 03:08:05</p> <p>24 A. That is what he told me. 03:08:06</p> <p>25 Q. Was anything -- was anything 03:08:07</p>	<p style="text-align: right;">64</p> <p>1 SCHNABEL</p> <p>2 Q. Now, prior to the November 4 03:09:09</p> <p>3 board meeting, other than what you just 03:09:26</p> <p>4 testified to did you have any other 03:09:27</p> <p>5 conversations with anybody within LVI or 03:09:28</p> <p>6 on the board about Mr. Fried's job duties 03:09:31</p> <p>7 or his future at LVI? 03:09:33</p> <p>8 A. If I -- if I -- certainly not 03:09:35</p> <p>9 with an employee of LVI. Did I talk to 03:09:44</p> <p>10 any of the board members? I really do not 03:09:50</p> <p>11 think so. 03:09:54</p> <p>12 Q. How about Mr. Leonard? 03:09:55</p> <p>13 MS. SELTZER: Objection. You 03:09:58</p> <p>14 mean as -- as a an executive of LVI? 03:10:00</p> <p>15 MR. DATOO: Yes. 03:10:04</p> <p>16 MS. SELTZER: I think it has 03:10:05</p> <p>17 been asked and answered. 03:10:06</p> <p>18 MR. DATOO: Yes. 03:10:07</p> <p>19 A. No, I did not speak with him 03:10:08</p> <p>20 prior to the board meeting. 03:10:10</p> <p>21 Q. Getting back to -- going back to 03:10:11</p> <p>22 the conversation you had with Mr. Fried 03:10:18</p> <p>23 regarding his job duties, did you document 03:10:22</p> <p>24 your conversation with Mr. Fried? 03:10:24</p> <p>25 A. I do not think so, no. 03:10:26</p>
<p style="text-align: right;">63</p> <p>1 SCHNABEL</p> <p>2 else discussed? 03:08:09</p> <p>3 A. Other than, you know, expressing 03:08:10</p> <p>4 frustration as to why this is such a big 03:08:16</p> <p>5 issue, I don't think so. 03:08:18</p> <p>6 Q. Who was expressing the 03:08:20</p> <p>7 frustration, you or Mr. Fried? 03:08:21</p> <p>8 A. Mostly Mr. Fried, but I too was 03:08:23</p> <p>9 somewhat befuddled. 03:08:26</p> <p>10 Q. And why? Why were you befuddled? 03:08:29</p> <p>11 A. Well, I -- again I looked at 03:08:35</p> <p>12 this with hope saying, look, I think there 03:08:37</p> <p>13 is some sort of a role that we could 03:08:39</p> <p>14 produce here and perhaps maybe soften some 03:08:41</p> <p>15 things, take some things off the list, 03:08:43</p> <p>16 recast them if it was, you know, truly 03:08:46</p> <p>17 something that was that sensitive. That 03:08:49</p> <p>18 is why. 03:08:53</p> <p>19 Q. And did Mr. Fried agree with 03:08:54</p> <p>20 your approach? 03:08:57</p> <p>21 MS. SELTZER: I object to the 03:08:59</p> <p>22 form. 03:09:00</p> <p>23 A. I don't know. I don't know 03:09:01</p> <p>24 what -- if he would ultimately have 03:09:05</p> <p>25 relented on anything. 03:09:08</p>	<p style="text-align: right;">65</p> <p>1 SCHNABEL</p> <p>2 Q. Okay. And was anyone -- was 03:10:29</p> <p>3 this a telephone call? 03:10:32</p> <p>4 A. Yes. 03:10:33</p> <p>5 Q. And was anyone else on the line? 03:10:34</p> <p>6 A. No. 03:10:38</p> <p>7 Q. Okay. How often did you see Mr. 03:10:39</p> <p>8 Fried? 03:10:42</p> <p>9 MS. SELTZER: Objection. 03:10:45</p> <p>10 Q. While Mr. State was the CEO? 03:10:46</p> <p>11 A. Does seeing include phone calls? 03:10:49</p> <p>12 Q. No, just actually seeing him. 03:10:53</p> <p>13 A. Face to face. Not very often. 03:10:55</p> <p>14 It would have been mostly phone calls and 03:11:01</p> <p>15 outside of board meetings two or three 03:11:06</p> <p>16 times perhaps. 03:11:09</p> <p>17 Q. And was that in New York or -- 03:11:10</p> <p>18 A. Yes. 03:11:13</p> <p>19 Q. -- somewhere else? 03:11:13</p> <p>20 A. It would have been in New York, 03:11:14</p> <p>21 but it would have only been in their 03:11:16</p> <p>22 offices. I never went to his office. 03:11:18</p> <p>23 Q. And this was during the time Mr. 03:11:20</p> <p>24 State was CEO? 03:11:21</p> <p>25 A. Yes. 03:11:22</p>

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<p style="text-align: right;">66</p> <p>1 SCHNABEL</p> <p>2 Q. Okay. And how about while Mr. 03:11:23</p> <p>3 Fried was the interim CEO, how many times 03:11:28</p> <p>4 did you see him face to face? 03:11:32</p> <p>5 A. Besides board meetings not often 03:11:33</p> <p>6 at all face to face. I mean it would have 03:11:43</p> <p>7 been impromptu. There would have been no 03:11:45</p> <p>8 reason to. We could communicate through 03:11:48</p> <p>9 e-mail and phone efficiently. So I -- the 03:11:50</p> <p>10 only time that we would come together and 03:11:54</p> <p>11 talk -- he is a board member of another 03:12:01</p> <p>12 portfolio company of ours, so we would 03:12:04</p> <p>13 meet in our offices for that, and we would 03:12:09</p> <p>14 chat a little bit, but that would happen 03:12:11</p> <p>15 rarely. Twice maybe. 03:12:14</p> <p>16 Q. With respect to this other 03:12:16</p> <p>17 company or with respect to LVI business? 03:12:17</p> <p>18 A. Well, he would be on the other 03:12:19</p> <p>19 company's business in our offices, and I 03:12:20</p> <p>20 would speak to him ad hoc, you know, just 03:12:23</p> <p>21 because he was there. 03:12:26</p> <p>22 Q. About LVI business? 03:12:28</p> <p>23 A. Yes. We would talk 03:12:29</p> <p>24 about -- yeah. 03:12:32</p> <p>25 Q. And with respect to phone calls 03:12:33</p>	<p style="text-align: right;">68</p> <p>1 SCHNABEL</p> <p>2 there was less reason for me to talk to 03:13:30</p> <p>3 him directly about LVI until this -- this 03:13:32</p> <p>4 time. 03:13:36</p> <p>5 Q. Okay. 03:13:36</p> <p>6 A. But we probably still spoke 03:13:36</p> <p>7 anyway. I mean we were -- he -- Mr. Fried 03:13:39</p> <p>8 actually spoke at our annual conference 03:13:42</p> <p>9 that year as -- as a representative of the 03:13:45</p> <p>10 board. So I talked to him a couple of 03:13:48</p> <p>11 times about that, and then I am sure we 03:13:50</p> <p>12 two or three times we had maybe one super 03:13:56</p> <p>13 in depth conversation but other 03:13:59</p> <p>14 than -- but I am sure we talked more than 03:14:00</p> <p>15 just once about this issue. 03:14:02</p> <p>16 Q. And how about while he 03:14:04</p> <p>17 was -- while Mr. Fried was interim CEO? 03:14:06</p> <p>18 How often did you speak to him on the 03:14:09</p> <p>19 phone about LVI business? 03:14:11</p> <p>20 A. If there was not a board meeting 03:14:13</p> <p>21 and there wasn't anything out of the norm, 03:14:17</p> <p>22 probably once a month, but occasionally we 03:14:22</p> <p>23 would look at an add on or an acquisition 03:14:25</p> <p>24 possibility or he would -- he would 03:14:30</p> <p>25 voluntarily call to update on a major 03:14:35</p>
<p style="text-align: right;">67</p> <p>1 SCHNABEL</p> <p>2 while Mr. State was CEO, how many times 03:12:37</p> <p>3 would you communicate by phone about LVI 03:12:42</p> <p>4 business? 03:12:48</p> <p>5 A. Before this matter or including 03:12:49</p> <p>6 this matter? 03:12:55</p> <p>7 Q. Well, while -- including this 03:12:56</p> <p>8 matter. 03:12:58</p> <p>9 A. Including this matter. 03:12:59</p> <p>10 Q. This matter meaning the job 03:13:00</p> <p>11 duties? 03:13:02</p> <p>12 A. The job duties? 03:13:03</p> <p>13 Q. Okay. 03:13:04</p> <p>14 A. All of it. We probably spoke on 03:13:05</p> <p>15 the phone I am guessing about maybe ten 03:13:08</p> <p>16 times. 03:13:13</p> <p>17 Q. While Mr. State was CEO? 03:13:14</p> <p>18 A. Yes. 03:13:16</p> <p>19 Q. All about LVI business? 03:13:16</p> <p>20 A. All about LVI business. 03:13:18</p> <p>21 Q. And only one time about his job 03:13:19</p> <p>22 duties and his future? 03:13:22</p> <p>23 A. No. I would think we had a 03:13:23</p> <p>24 couple of phone calls about that. I 03:13:25</p> <p>25 mean -- when -- when Scott State took over 03:13:27</p>	<p style="text-align: right;">69</p> <p>1 SCHNABEL</p> <p>2 piece of business. So, you know, twice a 03:14:38</p> <p>3 month I guess would be the average while 03:14:44</p> <p>4 he was interim CEO. 03:14:45</p> <p>5 Q. Now, did you attend the board 03:14:47</p> <p>6 meeting on November 4? 03:14:54</p> <p>7 A. Yes. 03:14:56</p> <p>8 Q. And how long did that meeting 03:14:56</p> <p>9 last for? 03:15:00</p> <p>10 A. I would say four or five hours. 03:15:01</p> <p>11 Q. And were Mr. Fried's job duties 03:15:13</p> <p>12 or his future at LVI discussed at this 03:15:17</p> <p>13 board meeting? 03:15:20</p> <p>14 A. Only with respect to was there 03:15:20</p> <p>15 some way to resolve the chairman role. 03:15:29</p> <p>16 Q. And at what point in the board 03:15:40</p> <p>17 meeting was this issue discussed? 03:15:45</p> <p>18 A. At the end. 03:15:46</p> <p>19 Q. And how long was it discussed 03:15:50</p> <p>20 for? 03:15:52</p> <p>21 A. There were several iterations 03:15:53</p> <p>22 where Burt spoke to the board only so 03:16:01</p> <p>23 management I think was asked to leave the 03:16:03</p> <p>24 room if -- if I am remembering this 03:16:07</p> <p>25 correctly, and so he spoke I would say 03:16:09</p>

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<p style="text-align: right;">70</p> <p>1 SCHNABEL</p> <p>2 about not quite an hour, but I mean it was 03:16:14</p> <p>3 more than 20, 30 minutes, and that is with 03:16:20</p> <p>4 some response back and forth from the rest 03:16:24</p> <p>5 of the board members. Then he left along 03:16:26</p> <p>6 with Scott, and then as a board we spoke 03:16:28</p> <p>7 for a while as well. I am not -- now, 03:16:31</p> <p>8 again, I am guessing how long that would 03:16:35</p> <p>9 have been, but I -- it had to be at least 03:16:37</p> <p>10 an hour. 03:16:42</p> <p>11 Q. And what did Mr. Fried say at 03:16:43</p> <p>12 this meeting? 03:16:47</p> <p>13 A. Well, he felt that we had come 03:16:47</p> <p>14 to an impasse or that he had come to an 03:16:53</p> <p>15 impasse with Scott, and he felt that 03:16:55</p> <p>16 that -- that this didn't make any sense 03:17:05</p> <p>17 whatsoever. He felt that he could not 03:17:12</p> <p>18 continue with his -- he would not just 03:17:12</p> <p>19 work at the pleasure of the CEO, that he 03:17:15</p> <p>20 wanted to have some defined 03:17:19</p> <p>21 responsibilities, and he felt he was not 03:17:23</p> <p>22 accorded the respect he is due as a 03:17:29</p> <p>23 long-term servant of the company, and he 03:17:32</p> <p>24 also made it clear that he did not 03:17:40</p> <p>25 want -- that if he was no longer going to 03:17:43</p>	<p style="text-align: right;">72</p> <p>1 SCHNABEL</p> <p>2 he put us a little bit on the spot. So I 03:19:15</p> <p>3 think fair is a -- fair is a kind of a 03:19:19</p> <p>4 difficult word, but I understand where he 03:19:25</p> <p>5 was coming from. It was completely in 03:19:26</p> <p>6 character, and I had sympathy for it. 03:19:28</p> <p>7 Q. Did you view Mr. Fried as making 03:19:31</p> <p>8 a threat? 03:19:39</p> <p>9 A. I think others might have. 03:19:40</p> <p>10 I -- I certainly personally did not. I 03:19:42</p> <p>11 did -- knowing Burt I understood where he 03:19:46</p> <p>12 was coming from. 03:19:48</p> <p>13 Q. How would you describe Mr. 03:19:49</p> <p>14 Fried's demeanor at this meeting while he 03:19:51</p> <p>15 was speaking? 03:19:53</p> <p>16 A. He -- he delivered his 03:19:54</p> <p>17 thoughts -- you know, he wasn't -- he 03:20:04</p> <p>18 wasn't overly emotional. He certainly was 03:20:09</p> <p>19 together. He was calm. I think as there 03:20:12</p> <p>20 was a little bit of back and forth I think 03:20:15</p> <p>21 he did become more agitated, but I -- I 03:20:19</p> <p>22 think everybody else did, too. It was 03:20:22</p> <p>23 certainly uncomfortable. 03:20:30</p> <p>24 Q. Why was that? 03:20:32</p> <p>25 A. Well, he is was clearly unhappy. 03:20:32</p>
<p style="text-align: right;">71</p> <p>1 SCHNABEL</p> <p>2 have these specific duties that he no 03:17:45</p> <p>3 longer wanted any outside parties who may 03:17:47</p> <p>4 depend upon him to think that he did have 03:17:52</p> <p>5 something to do with them. So, in other 03:17:56</p> <p>6 words, if the surety, and he used that as 03:17:57</p> <p>7 an example, took comfort in the fact that 03:18:01</p> <p>8 Burt was there looking -- overlooking the 03:18:04</p> <p>9 underwriting of any particular contract he 03:18:09</p> <p>10 wanted us to affirmative -- the board to 03:18:14</p> <p>11 affirmatively or the company to 03:18:18</p> <p>12 affirmatively tell the sureties that he no 03:18:20</p> <p>13 longer was involved. 03:18:24</p> <p>14 Q. Do you think that was a fair 03:18:25</p> <p>15 request? 03:18:27</p> <p>16 A. I think it was -- I don't know 03:18:27</p> <p>17 to be honest with you. I think it is 03:18:37</p> <p>18 completely within him as a person that I 03:18:38</p> <p>19 have known for fifteen, sixteen years. 03:18:43</p> <p>20 Burt is someone who integrity means a lot 03:18:46</p> <p>21 to. So he would not want anyone to borrow 03:18:50</p> <p>22 his -- you know, his reputation. So that 03:18:57</p> <p>23 I think is -- is fair. I think that we 03:19:03</p> <p>24 didn't want to just kind of blow up our 03:19:09</p> <p>25 relationship with the surety. So I think 03:19:13</p>	<p style="text-align: right;">73</p> <p>1 SCHNABEL</p> <p>2 Burt is not someone to -- he communicates 03:20:35</p> <p>3 very well, and so I think in that 03:20:39</p> <p>4 circumstance anybody would have been 03:20:42</p> <p>5 uncomfortable, and I mean ultimately he 03:20:43</p> <p>6 does tell the board that he believes that 03:20:47</p> <p>7 this is age related. I mean that was the 03:20:49</p> <p>8 last statement or -- that he wanted to 03:20:53</p> <p>9 leave this with. 03:20:57</p> <p>10 Q. Did he say why he felt this was 03:20:58</p> <p>11 age related? 03:21:00</p> <p>12 A. He had mentioned that -- a 03:21:01</p> <p>13 previous conversation he had with Scott, 03:21:04</p> <p>14 and that was -- that was it. 03:21:09</p> <p>15 Q. Is it the same comment that he 03:21:10</p> <p>16 told you that Mr. State made? 03:21:12</p> <p>17 A. Yes. 03:21:13</p> <p>18 Q. Okay. And after Mr. Fried 03:21:14</p> <p>19 spoke -- sorry. Was Mr. State present 03:21:19</p> <p>20 while Mr. Fried -- was Mr. State present 03:21:21</p> <p>21 while Mr. Fried spoke? 03:21:24</p> <p>22 A. Yes. 03:21:25</p> <p>23 Q. And did Mr. -- sorry. 03:21:26</p> <p>24 MR. DATOO: Strike that. 03:21:31</p> <p>25 Q. While Mr. Fried was speaking, 03:21:32</p>

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<p>1 SCHNABEL</p> <p>2 Q. Other than the first page, can 04:43:15</p> <p>3 you tell me if you have seen this document 04:43:17</p> <p>4 before? 04:43:18</p> <p>5 A. I don't think I have. 04:43:19</p> <p>6 Q. Is that the first time you've 04:43:40</p> <p>7 seen this document? 04:43:42</p> <p>8 A. I think it is. 04:43:43</p> <p>9 Q. Did anyone ever -- do you know 04:43:49</p> <p>10 what this document is? 04:43:53</p> <p>11 A. Yes. 04:43:54</p> <p>12 Q. What is it? 04:43:54</p> <p>13 A. It is a communication to the 04:43:56</p> <p>14 company that Mr. Fried has been -- maybe 04:44:03</p> <p>15 he has been wrongfully terminated at this 04:44:09</p> <p>16 point. I don't know but -- or that he has 04:44:12</p> <p>17 been harmed. 04:44:14</p> <p>18 Q. Do you recall having a 04:44:15</p> <p>19 discussion regarding this letter? 04:44:16</p> <p>20 A. Yes. 04:44:17</p> <p>21 Q. Do you know when you had that 04:44:17</p> <p>22 discussion? 04:44:19</p> <p>23 A. I am sure there was a board 04:44:19</p> <p>24 meeting convened, a telephonic board 04:44:24</p> <p>25 meeting convened shortly after this 04:44:28</p>	<p>1 SCHNABEL</p> <p>2 through it. I am not going to ask him -- 04:45:23</p> <p>3 MS. SELTZER: Okay. 04:45:25</p> <p>4 MR. DATOO: Well, I don't even 04:45:26</p> <p>5 know what I am going to ask him yet. 04:45:27</p> <p>6 Q. What would be the purpose of Mr. 04:45:30</p> <p>7 Smith being on the phone? 04:45:32</p> <p>8 A. Well, he was company counsel. 04:45:33</p> <p>9 He was on every board meeting and -- 04:45:35</p> <p>10 Q. Was -- 04:45:37</p> <p>11 A. -- he would be viewed as 04:45:38</p> <p>12 corporate -- you know, corporate counsel 04:45:40</p> <p>13 for this -- for this particular purpose. 04:45:42</p> <p>14 Q. Was he also the secretary to the 04:45:45</p> <p>15 board? 04:45:46</p> <p>16 A. Yes, he was. 04:45:46</p> <p>17 Q. And was he also responsible for 04:45:48</p> <p>18 taking minutes? 04:45:49</p> <p>19 A. Yes, he was. 04:45:50</p> <p>20 Q. And would this have been an 04:45:51</p> <p>21 instance where minutes would be taken? 04:45:56</p> <p>22 MS. SELTZER: Objection to the 04:46:02</p> <p>23 form. 04:46:03</p> <p>24 A. Yes, I mean can you re -- can 04:46:03</p> <p>25 you tell me -- ask me in a different way? 04:46:12</p>
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<p>1 SCHNABEL</p> <p>2 letter, sort of 16th, 17th. I don't know. 04:44:30</p> <p>3 Q. Do you remember who was present 04:44:33</p> <p>4 on -- during that telephonic meeting? 04:44:35</p> <p>5 A. I -- I assume the entire board 04:44:37</p> <p>6 was there. I can't -- I don't remember 04:44:41</p> <p>7 anyone not being there. 04:44:43</p> <p>8 Q. Do you know if Mr. Jeffrey Smith 04:44:44</p> <p>9 was on the line? 04:44:45</p> <p>10 A. I don't recall, but I would not 04:44:47</p> <p>11 be surprised that he would be. 04:44:55</p> <p>12 Q. And what would -- 04:44:57</p> <p>13 MS. SELTZER: Okay. This is 04:44:58</p> <p>14 where we have to draw a line. If Jeffrey 04:45:00</p> <p>15 Smith was on that telephone call, and I 04:45:02</p> <p>16 don't know whether he was or he wasn't, he 04:45:04</p> <p>17 was acting as counsel for the board, and I 04:45:06</p> <p>18 am not going to let Mr. Schnabel testify 04:45:09</p> <p>19 as to the contents of that conversation. 04:45:12</p> <p>20 MR. DATOO: First of all, we 04:45:14</p> <p>21 don't know that. Second of all, he served 04:45:15</p> <p>22 as a secretary taking the minutes. 04:45:17</p> <p>23 MS. SELTZER: No, he was also 04:45:19</p> <p>24 serving as counsel for the board. 04:45:20</p> <p>25 MR. DATOO: Let me just go 04:45:22</p>	<p>1 SCHNABEL</p> <p>2 Q. Sure. Well, let me just ask a 04:46:14</p> <p>3 series of questions. Mr. Smith was 04:46:20</p> <p>4 secretary of the board, correct? 04:46:22</p> <p>5 A. Yes. 04:46:23</p> <p>6 Q. And it was part of his job as 04:46:23</p> <p>7 secretary to take minutes of board 04:46:27</p> <p>8 meetings? 04:46:30</p> <p>9 A. Yes. 04:46:31</p> <p>10 Q. And was this a board meeting? 04:46:31</p> <p>11 A. I don't recall if there was a 04:46:33</p> <p>12 formal call of a meeting -- call of a 04:46:35</p> <p>13 meeting, but certainly everybody on the 04:46:37</p> <p>14 board was on the phone call. 04:46:39</p> <p>15 Q. And in those instances are 04:46:41</p> <p>16 minutes taken? 04:46:46</p> <p>17 A. If it is a formal board call, 04:46:50</p> <p>18 yes, I would assume there would be. 04:46:53</p> <p>19 Q. Okay. And if minutes don't 04:46:56</p> <p>20 exist, is that -- so should minutes have 04:46:58</p> <p>21 existed of that meeting? 04:47:02</p> <p>22 A. I didn't really view that 04:47:03</p> <p>23 as -- as a board meeting. I didn't have 04:47:07</p> <p>24 this letter. I think people were reacting 04:47:12</p> <p>25 to the letter. I think they were looking 04:47:14</p>

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<p style="text-align: right;">142</p> <p>1 SCHNABEL</p> <p>2 for counsel, and they wanted everyone to 04:47:16</p> <p>3 hear the counsel together, and I would 04:47:19</p> <p>4 assume that we were talking to Jeffrey. 04:47:27</p> <p>5 We are not -- we are certainly not talking 04:47:30</p> <p>6 to Greg DiCarlo. There is no other 04:47:33</p> <p>7 counsel on the line. This is a legal 04:47:34</p> <p>8 matter, so I mean I -- to be honest with 04:47:36</p> <p>9 you I don't think I would have -- I would 04:47:41</p> <p>10 have defined it quite that closely, but I 04:47:42</p> <p>11 didn't -- I knew that we were asking him 04:47:47</p> <p>12 him his opinion. 04:47:51</p> <p>13 Q. Do you know if he was on the 04:47:52</p> <p>14 line for sure? 04:47:53</p> <p>15 A. For sure. For sure no. But I 04:47:54</p> <p>16 would assume he would have been. 04:48:02</p> <p>17 Q. Would he have been on the line 04:48:04</p> <p>18 the whole time? 04:48:06</p> <p>19 A. Yes. I mean if this was not a 04:48:07</p> <p>20 board meeting, and we were talking about 04:48:11</p> <p>21 this and he was a part of it, we wouldn't 04:48:13</p> <p>22 have recused him. We just would have been 04:48:15</p> <p>23 talking to him. 04:48:18</p> <p>24 Q. Did you take any notes of this 04:48:19</p> <p>25 meeting? 04:48:21</p>	<p style="text-align: right;">144</p> <p>1 SCHNABEL</p> <p>2 decided. 04:49:15</p> <p>3 MS. SELTZER: Whatever the 04:49:15</p> <p>4 decision was arrived at was arrived at 04:49:16</p> <p>5 with counsel's consent or with counsel's 04:49:18</p> <p>6 counsel, so I am not going to let him 04:49:22</p> <p>7 answer that you can take that to the 04:49:24</p> <p>8 judge. He is not going to talk about it. 04:49:27</p> <p>9 MR. DATOO: Okay. 04:49:31</p> <p>10 Q. What did you do after this 04:49:32</p> <p>11 meeting? 04:49:34</p> <p>12 A. I probably spoke to my partners. 04:49:34</p> <p>13 Q. About what? 04:49:40</p> <p>14 A. The fact that -- that Burt was 04:49:42</p> <p>15 going to pursue legal recourse. 04:49:47</p> <p>16 Q. Okay. Did you speak to anybody 04:49:50</p> <p>17 -- when you say partners, who do you mean 04:49:52</p> <p>18 by partners? 04:49:55</p> <p>19 A. Partners at Falcon. 04:49:56</p> <p>20 Q. Did you speak to anybody else 04:49:58</p> <p>21 after the phone call, any other board 04:49:59</p> <p>22 members after the phone call? 04:50:02</p> <p>23 A. No. I mean they probably showed 04:50:04</p> <p>24 me an e-mail where you'll probably show me 04:50:10</p> <p>25 an e-mail where I said I do -- -- I do not 04:50:13</p>
<p style="text-align: right;">143</p> <p>1 SCHNABEL</p> <p>2 A. There was nothing to take notes 04:48:22</p> <p>3 of. No. 04:48:23</p> <p>4 Q. Do you recall when this meeting 04:48:24</p> <p>5 took place, telephonic meeting? 04:48:26</p> <p>6 A. I assume sometime after this, 04:48:30</p> <p>7 but closely after this date. I mean I 04:48:32</p> <p>8 don't know what day of the week is the 04:48:34</p> <p>9 15th. I mean -- 04:48:36</p> <p>10 MS. SELTZER: The 16th is a 04:48:38</p> <p>11 Tuesday. So -- 04:48:40</p> <p>12 A. Tuesday so a day or two later. 04:48:42</p> <p>13 Q. Okay. And was anything decided 04:48:45</p> <p>14 at the end of this meeting? 04:48:58</p> <p>15 MS. SELTZER: Objection. 04:48:59</p> <p>16 MR. DATOO: I am no asking 04:49:00</p> <p>17 about any communication with counsel. 04:49:01</p> <p>18 MS. SELTZER: No, he is not 04:49:03</p> <p>19 going to talk about anything that was 04:49:04</p> <p>20 discussed and decided at that particular 04:49:05</p> <p>21 meeting with counsel. You are not to 04:49:07</p> <p>22 answer that question. 04:49:09</p> <p>23 MR. DATOO: I am not asking him 04:49:10</p> <p>24 about any communications he had with 04:49:11</p> <p>25 counsel. I just want to know what they 04:49:12</p>	<p style="text-align: right;">145</p> <p>1 SCHNABEL</p> <p>2 recall doing that because I was not happy 04:50:19</p> <p>3 with this outcome. 04:50:20</p> <p>4 Q. Now, at this point in time prior 04:50:22</p> <p>5 to having this telephonic board meeting, 04:50:23</p> <p>6 was Mr. Simmons' letter proposal finalized 04:50:26</p> <p>7 at that point? 04:50:31</p> <p>8 A. Can you say that again? 04:50:34</p> <p>9 Q. Sure. The letter you referred 04:50:35</p> <p>10 to that Mr. Simmons was putting together, 04:50:37</p> <p>11 which would contain the proposal to Mr. 04:50:39</p> <p>12 Fried, was it finalized at the time you 04:50:41</p> <p>13 had this telephonic -- 04:50:44</p> <p>14 A. I am sure. I am sure that this 04:50:46</p> <p>15 is a reaction to it. Sure, I would -- I 04:50:48</p> <p>16 would think that it was delivered. 04:50:50</p> <p>17 Q. You think the letter in front of 04:50:52</p> <p>18 you, which is Plaintiff's Exhibit 8, was 04:50:54</p> <p>19 in reaction to the proposal? 04:50:57</p> <p>20 A. I would assume so, yes. I mean 04:51:00</p> <p>21 I guess I am wrong, but I -- I would 04:51:04</p> <p>22 assume so. 04:51:06</p> <p>23 Q. Handing you a document that has 04:51:16</p> <p>24 been previously marked as Plaintiff's 04:51:21</p> <p>25 Exhibit 11, can you take a look at the 04:51:23</p>

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<p style="text-align: right;">146</p> <p>1 SCHNABEL</p> <p>2 document and let me know if you've seen it 04:51:25</p> <p>3 before? 04:51:28</p> <p>4 A. I have not seen this before. 04:51:35</p> <p>5 All right. So you got -- you did this 04:51:36</p> <p>6 beforehand. 04:51:40</p> <p>7 Q. Is -- is this the terms of the 04:51:40</p> <p>8 proposal or the -- or Mr. Simmons' letter 04:51:44</p> <p>9 that you were referring to earlier? 04:51:49</p> <p>10 A. The numbers look right. 04:51:51</p> <p>11 Q. So do you -- do you still 04:52:08</p> <p>12 believe that the letter, Plaintiff's 04:52:10</p> <p>13 Exhibit -- 04:52:12</p> <p>14 A. No, the dates are the day after. 04:52:12</p> <p>15 Q. Okay. 04:52:14</p> <p>16 MS. SELTZER: Can we go off the 04:52:16</p> <p>17 record just one second? 04:52:17</p> <p>18 MR. DATOO: Sure. 04:52:19</p> <p>19 THE VIDEOGRAPHER: We're going 04:52:20</p> <p>20 off the record. The time is 4:52. 04:52:20</p> <p>21 (Discussion held off the 04:52:20</p> <p>22 record.) 04:53:16</p> <p>23 THE VIDEOGRAPHER: We are 04:53:16</p> <p>24 returning to the record at 4:53 p.m. 04:53:22</p> <p>25 Q. Now, if you -- if you look at 04:53:24</p>	<p style="text-align: right;">148</p> <p>1 SCHNABEL</p> <p>2 the terms of this letter -- are the terms 04:54:18</p> <p>3 of this letter consistent with the 04:54:20</p> <p>4 proposal you were talking about? 04:54:24</p> <p>5 A. The -- the proposal that I knew 04:54:25</p> <p>6 about was a longer proposal. It was 04:54:28</p> <p>7 several pages in length. I see that the 04:54:40</p> <p>8 week before it looks like what happens is 04:54:43</p> <p>9 I am now -- I am assuming that this was 04:54:52</p> <p>10 delivered to the company. The board meets 04:54:54</p> <p>11 that night, and there is a sense that we 04:54:56</p> <p>12 need to send something to say, hey, Burt 04:54:58</p> <p>13 there is something on the table for you to 04:55:00</p> <p>14 consider. 04:55:02</p> <p>15 Q. Okay. 04:55:02</p> <p>16 A. But that we used an abbreviated 04:55:04</p> <p>17 letter of this sort, I did not know about 04:55:07</p> <p>18 it or I certainly don't recall. 04:55:10</p> <p>19 THE VIDEOGRAPHER: Going off 04:55:22</p> <p>20 the record, 4:55 p.m. End of tape number 04:55:23</p> <p>21 2. 04:55:29</p> <p>22 (Recess taken.) 05:04:03</p> <p>23 THE VIDEOGRAPHER: We are 05:04:03</p> <p>24 returning to the record. 5:04 p.m., 05:04:04</p> <p>25 beginning of tape number 3. 05:04:08</p>
<p style="text-align: right;">147</p> <p>1 SCHNABEL</p> <p>2 Plaintiff's Exhibit 8, did you see this 04:53:28</p> <p>3 letter? 04:53:35</p> <p>4 A. Sorry. What is 8? 04:53:37</p> <p>5 Q. Plaintiff's 8. It should say at 04:53:39</p> <p>6 the bottom. 04:53:42</p> <p>7 A. This is 11. 04:53:43</p> <p>8 Q. I am sorry. 04:53:44</p> <p>9 MS. SELTZER: This is 11. 04:53:45</p> <p>10 Q. I am sorry. Plaintiff's 11? 04:53:46</p> <p>11 A. Yes. 04:53:48</p> <p>12 Q. Did you see this letter before 04:53:48</p> <p>13 it was delivered to Mr. Fried? 04:53:51</p> <p>14 A. No. 04:53:54</p> <p>15 Q. Okay. But I believe you 04:53:55</p> <p>16 testified earlier that this was consistent 04:53:58</p> <p>17 with -- 04:54:01</p> <p>18 MS. SELTZER: Objection. 04:54:04</p> <p>19 That -- that is not what he said. 04:54:05</p> <p>20 MR. DATOO: Well, you didn't 04:54:08</p> <p>21 let me finish question first of all. 04:54:09</p> <p>22 MS. SELTZER: Well, he was 04:54:11</p> <p>23 about to answer, so I wanted to jump in 04:54:12</p> <p>24 before -- before he did. 04:54:15</p> <p>25 Q. Is this letter consistent -- do 04:54:16</p>	<p style="text-align: right;">149</p> <p>1 SCHNABEL</p> <p>2 (Document handed to witness.) 05:04:10</p> <p>3 Q. Mr. Schnabel, I have handed you 05:04:10</p> <p>4 a document that has previously been marked 05:04:12</p> <p>5 as Plaintiff's Exhibit number 12. 05:04:15</p> <p>6 A. Okay. 05:04:17</p> <p>7 Q. Look at the document and let me 05:04:18</p> <p>8 know if you've seen it before. 05:04:20</p> <p>9 A. Not with this letterhead, but, 05:04:22</p> <p>10 yes, I have seen this before. 05:04:24</p> <p>11 Q. So the -- and do the contents of 05:04:26</p> <p>12 this document -- 05:04:29</p> <p>13 A. So this was the cover letter to 05:04:29</p> <p>14 this (indicating). 05:04:32</p> <p>15 Q. When you say -- 05:04:33</p> <p>16 A. 11 was a cover letter of 12. 05:04:34</p> <p>17 MS. SELTZER: They were both 05:04:37</p> <p>18 attached to the same e-mail. So the 05:04:45</p> <p>19 answer would be yes to that, and they are 05:04:47</p> <p>20 Bates stamped consecutively. So -- 05:04:50</p> <p>21 MR. DATOO: Yes, I just -- 05:04:52</p> <p>22 A. Okay. 05:04:53</p> <p>23 Q. Okay. So is this I guess the 05:04:54</p> <p>24 proposal that you've seen before, the 05:04:58</p> <p>25 longer form you were referring to earlier? 05:05:00</p>

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<p style="text-align: right;">158</p> <p>1 SCHNABEL</p> <p>2 because Scott will not stay. 05:21:57</p> <p>3 Q. And you chose Scott? 05:22:00</p> <p>4 A. I think practically I chose 05:22:05</p> <p>5 Scott. Not because I didn't want Burt but 05:22:09</p> <p>6 because we didn't have a CEO. If Scott 05:22:12</p> <p>7 would have left, that would have been 05:22:15</p> <p>8 practically very difficult for us. 05:22:18</p> <p>9 Q. Why is that? 05:22:19</p> <p>10 A. Well, we just went through a CEO 05:22:20</p> <p>11 search and found nobody other than Scott, 05:22:24</p> <p>12 who was referred to us by Burt, realized 05:22:26</p> <p>13 that we would have to go back to the well. 05:22:30</p> <p>14 We were in a company that was not doing 05:22:32</p> <p>15 very well in that particular quarter and 05:22:34</p> <p>16 saw some more difficulties ahead. 05:22:38</p> <p>17 (Continued on next page.) 05:22:38</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">160</p> <p>1 SCHNABEL</p> <p>2 CERTIFICATION</p> <p>3</p> <p>4</p> <p>5</p> <p>6 I, DEBBIE ZAROMATIDIS, a Shorthand</p> <p>7 Reporter and a Notary Public, do hereby</p> <p>8 certify that the foregoing witness, JOHN</p> <p>9 SCHANBEL, was duly sworn on the date</p> <p>10 indicated, and that the foregoing is a</p> <p>11 true and accurate transcription of my</p> <p>12 stenographic notes.</p> <p>13 I further certify that I am not</p> <p>14 employed by nor related to any party to</p> <p>15 this action.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 DEBBIE ZAROMATIDIS</p> <p>24</p> <p>25</p>
<p style="text-align: right;">159</p> <p>1 SCHNABEL</p> <p>2 A. If -- if I had lobbied that Burt 05:22:43</p> <p>3 had to stay or I would vote against any 05:22:48</p> <p>4 proposal, it definitely would have been 05:22:52</p> <p>5 viewed by Scott as a no confidence vote 05:22:58</p> <p>6 from me. 05:23:00</p> <p>7 MR. DATOO: Okay. Thank you 05:23:03</p> <p>8 very much. No further questions. 05:23:11</p> <p>9 THE VIDEOGRAPHER: We're going 05:23:14</p> <p>10 off the record, 5:23 p.m. End of today's 05:23:14</p> <p>11 questioning. 05:23:17</p> <p>12 (Time noted: 5:23 p.m.) 05:23:20</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 JOHN SCHANBEL</p> <p>20</p> <p>21 Subscribed and sworn to before me</p> <p>22 this day of , 2011</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">161</p> <p>1 SCHNABEL</p> <p>2 EXHIBITS</p> <p>3</p> <p>4 PLAINTIFF'S</p> <p>5 EXHIBIT DESCRIPTION PAGE</p> <p>6 38 E-mail 50</p> <p>7 40 E-mail 95</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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Exhibit 9

From: State, Scott <state, scott@lvi.com>
Sent: Friday, November 5, 2010 3:53 PM
To: David S. Hicks <David.S.Hicks@us.mwhglobal.com>
Subject: RE: How did your LVI board meeting go?

Generally as expected and full endorsement by the Board of my Agenda. In a battle with founder about his need to retire but Board gets it and is working to exit him with some respect. All in all, on course I described to you.

From: David S. Hicks [David.S.Hicks@us.mwhglobal.com]
Sent: Friday, November 05, 2010 2:11 PM
To: State, Scott
Subject: How did your LVI board meeting go?

Scott --

At your convenience, please let me know if the board meeting went the way you expected.

Thanks,

Dave

Exhibit 10

HUMAN RESOURCES

"THE BIBLE"

PERSONAL & CONFIDENTIAL

August, 2010

01 REVERSED CHARGES

IN REVENUE COLLECTIONS